

# The Immigration and Naturalization Service's Contacts With Two September 11 Terrorists: A Review of the INS's Admissions of Mohamed Atta and Marwan Alshehhi, its Processing of their Change of Status Applications, and its Efforts to Track Foreign Students in the United States



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# TABLE OF CONTENTS

TABLE OF CONTENTS .....	i
EXECUTIVE SUMMARY .....	1
CHAPTER ONE: INTRODUCTION.....	19
I.    Introduction .....	19
II.   Organization of the Report.....	21
CHAPTER TWO: BACKGROUND.....	23
I.    Organizational Structure of the INS .....	23
II.   Visitor Visas .....	25
A.  Entrance of nonimmigrants into the United States .....	25
B.  Description of visitor visa classifications .....	25
C.  Length of stay permitted by the visitor visa.....	28
1.  Period of validity of the visa.....	28
2.  Length of admission under the B-1/B-2 classification.....	28
III.  Foreign Students .....	29
CHAPTER THREE: ATTA’S AND ALSHEHHI’S ENTRIES INTO THE UNITED STATES .....	32
I.    Introduction .....	32
II.   The Inspection Process .....	32
A.  The primary inspection process .....	33
B.  The secondary inspection process.....	35
III.  Atta’s Entries into the United States .....	36
A.  Atta’s first entry – June 3, 2000, Newark, New Jersey .....	37
B.  Atta’s second entry – January 10, 2001, Miami, Florida.....	37
1.  Processing Atta at the POE.....	37
2.  OIG analysis .....	41
3.  Effect of departure while change of status application is pending .....	45

4.	Atta’s length of admission.....	47
C.	Atta’s third entry – July 19, 2001, Miami, Florida .....	49
IV.	Alshehhi’s Entries into the United States .....	50
A.	Alshehhi’s first entry – May 29, 2000, Newark, New Jersey .....	50
B.	Alshehhi’s second entry – January 18, 2001, New York, New York.....	52
C.	Alshehhi’s third entry – May 2, 2001, Miami, Florida .....	55
V.	OIG Conclusions on the INS’s Admission of Atta and Alshehhi.....	56
	CHAPTER FOUR: THE INS’S DELAYED PROCESSING OF ATTA’S AND ALSHEHHI’S APPLICATIONS FOR CHANGE OF STATUS.....	59
I.	Introduction .....	59
II.	Process to Obtain Nonimmigrant Student Status .....	59
III.	Huffman Aviation’s Initiation of Atta’s and Alshehhi’s Applications for Change of Status .....	61
IV.	Processing at the Texas Service Center.....	63
A.	INS service center organization and mission .....	63
B.	Processing and adjudication of I-539 applications for change of status .....	66
1.	Pre-adjudication processing.....	66
2.	The adjudication process.....	69
C.	The TSC did not adjudicate Atta’s And Alshehhi’s I-539 applications in a timely manner .....	70
1.	RAFACS history for Atta’s I-539 application .....	71
2.	RAFACS history for Alshehhi’s I-539 application .....	72
3.	Backlogs at the TSC .....	73
4.	Delay in the transmission of the school I-20 form to ACS.....	76
V.	ACS’s Processing of the School Copies of Atta’s and Alshehhi’s I-20 Forms .....	77
A.	ACS contract to process INS immigration forms .....	78
B.	How ACS processes I-20 forms .....	79

C.	The mailing of Atta’s and Alshehhi’s I-20s to Huffman Aviation .....	82
D.	OIG’s analysis of ACS’s processing of the I-20s .....	84
1.	Atta’s and Alshehhi’s I-20s were handled in the same manner as other I-20s received by ACS at the time.....	84
a.	Atta’s I-20.....	84
b.	Alshehhi’s I-20 .....	85
2.	The contract requirements for handling I-20s after processing .....	86
VI.	OIG Conclusions Regarding the Delay in Sending the I-20 Forms to Huffman Aviation .....	90
VII.	Adjudication of Atta’s and Alshehhi’s I-539s .....	91
A.	Requirements for approval for I-539 change of status .....	91
1.	Signature requirement .....	93
2.	Proof that applicant timely filed the application .....	94
3.	Evidence requirement .....	95
B.	Length of stay for nonimmigrant vocational students.....	96
C.	Information that could have affected the adjudication.....	98
1.	Completion of the course by Atta and Alshehhi on December 19, 2000.....	98
2.	Lack of sufficient hours for “full course of study” .....	100
3.	Departures by Atta and Alshehhi while their I-539 applications were pending .....	100
D.	Production pressures and the I-539 .....	101
E.	OIG conclusions regarding the adjudication of Atta’s and Alshehhi’s change of status applications .....	103
CHAPTER FIVE: THE INS’S FAILURE TO STOP DELIVERY OF THE I-20S TO HUFFMAN AVIATION .....		105
I.	Introduction .....	105
II.	Actions of ACS and INS Employees .....	105
A.	Actions of ACS.....	105
B.	Actions of the TSC personnel and INS Headquarters managers overseeing the service centers.....	106
1.	Retrieval of the Atta and Alshehhi files at the TSC.....	106
2.	Actions taken by TSC and INS Headquarters managers .....	109

3.	Reasons TSC and Immigration Services Division personnel did not stop the I-20s before they were mailed to Huffman Aviation .....	110
a.	TSC personnel .....	110
b.	Immigration Services Division managers .....	111
4.	OIG analysis .....	113
C.	Actions of INS Headquarters Enforcement Division personnel ...	116
1.	Organization of Enforcement Division.....	116
2.	Events at INS Headquarters on and around September 11....	117
3.	Enforcement Division requests for information and the handling of Atta's and Alshehhi's files .....	118
4.	Reasons stated by Enforcement personnel for not asking for all INS records or files related to the terrorists .....	119
5.	OIG analysis .....	120
III.	The INS's Response to OIG Criticism.....	122
CHAPTER SIX: THE INS'S FOREIGN STUDENT PROGRAM.....		124
I.	Introduction .....	124
II.	Background.....	124
A.	Scope and methodology of review .....	125
B.	Statistics on student visas .....	126
C.	The student visa application process .....	127
III.	Deficiencies in the Foreign Student Program .....	129
A.	Inadequacies in the INS's process for approving schools .....	129
1.	Legal requirements for schools to be certified to accept foreign students .....	129
2.	The I-17 petition and the INS's certification process .....	132
3.	Inadequate resources devoted to school approval process ....	132
4.	Lack of in-person interviews and site visits prior to approval.....	133
5.	Lack of re-certifications .....	135
6.	Review of Huffman Aviation file .....	136
B.	Lack of security features on I-20 forms.....	139
C.	Inadequacies in collecting information concerning student status.....	140

D.	Deficiencies in the Student and Schools System (STSC) database.....	141
E.	Lack of enforcement .....	144
F.	Lack of training for designated school officials and INS schools officers .....	144
IV.	Student and Exchange Visitor System (SEVIS) .....	146
A.	History of SEVIS .....	146
B.	How SEVIS will work .....	150
1.	Data to be collected in SEVIS concerning foreign students and exchange visitors .....	151
2.	Data to be collected concerning schools .....	152
3.	SEVIS procedures.....	152
a.	School certifications .....	152
b.	Issuance of I-20 to foreign student .....	154
c.	State Department access to SEVIS .....	154
d.	Inspectors' access to SEVIS and updating of student's record that student has entered the country .....	155
e.	Updating of student's record once student enrolls in school.....	155
C.	Schedule for implementation .....	157
V.	OIG analysis of SEVIS .....	157
A.	Deficiencies that SEVIS will address.....	158
1.	Improved data collection.....	158
2.	Improving fraud detection and deterrence.....	159
B.	Deficiencies SEVIS will not address.....	160
C.	SEVIS implementation difficulties.....	161
1.	Ensuring that approved schools are re-certified prior to the January 30, 2003, implementation deadline.....	161
2.	Collecting the processing fee as required by statute.....	163
VI.	Conclusion.....	164
<b>CHAPTER SEVEN: THE INS'S PROPOSED CHANGES REGARDING FOREIGN STUDENTS.....</b>		<b>166</b>
I.	Introduction .....	166
II.	Proposed Processing Changes .....	166

A.	Processing the student copy of the I-20 .....	166
B.	Database checks before I-539s are adjudicated .....	168
1.	Check of NIIS database.....	168
2.	Check of the Interagency Border Inspection System.....	169
3.	Performance standards for CAOs.....	170
III.	Proposed regulatory changes.....	171
A.	Proposed change: Aliens who enter the country without a student visa may not begin a course of study until their I-539 petition for change of status to student has been adjudicated favorably. ....	171
B.	Proposed change: A visitor entering the country must articulate reasons that would support a length of stay longer than 30 days, and if the visitor cannot the default admission period will be 30 days.....	173
C.	Proposed change: Require prospective foreign students to demonstrate their intent to attend school at the time they are admitted on a B-1/B-2 visa in order to be eligible later to seek a change of status to F-1 or M-1. ....	174
D.	Proposed change: Require flight schools to initiate background and fingerprint checks when a student seeks to learn how to fly a plane over 12,500 pounds. ....	177
	CHAPTER EIGHT: RECOMMENDATIONS .....	178
I.	Introduction .....	178
II.	Recommendations .....	179
A.	Management of the foreign student program .....	179
B.	Recommendations that affect all foreign students .....	179
1.	Implementation of SEVIS .....	179
2.	Defining “prospective student” .....	181
3.	Capturing information about part-time students.....	181
C.	Recommendations that affect nonimmigrants who wish to change their status to that of a student.....	182
1.	Adequate resources to ensure processing of I-539 applications in 30 days .....	182
2.	IBIS checks .....	183
D.	Recommendations that affect immigration inspectors .....	183

1.	Abandonment of I-539 applications .....	183
2.	I-193 waivers.....	184
E.	General recommendations .....	184
1.	Performance standards for CAOs.....	184
2.	INS policies.....	184
CHAPTER NINE: CONCLUSION.....		186

APPENDIX:

INS FORM I-94 (ARRIVAL DEPARTURE RECORD)..... A-1  
CHART REGARDING WAIVERS AT JOHN F. KENNEDY  
INTERNATIONAL AIRPORT AND SEAPORT..... A-2  
INS FORM I-539 (APPLICATION TO EXTEND/CHANGE  
NONIMMIGRANT STATUS)..... A-3  
INS FORM I-20 (CERTIFICATE OF ELIGIBILITY FOR  
NONIMMIGRANT STUDENT)..... A-8  
LIST OF RECOMMENDATIONS ..... A-12

## **EXECUTIVE SUMMARY**

Mohamed Atta and Marwan Alshehhi were 2 of the 19 terrorists who hijacked and crashed 4 airplanes on September 11, 2001, resulting in the deaths of over 3,000 individuals, the complete destruction of the World Trade Center Towers in New York City, and extensive damage to the Pentagon. Atta is believed to have been the pilot who flew the plane into the Trade Center's North Tower. Alshehhi is believed to have flown the plane into the South Tower. Both terrorists died in the attack.

Six months later, on March 11, 2002, Huffman Aviation International, a small flight training school in Venice, Florida, received official documents sent by the Immigration and Naturalization Service (INS) relating to Atta and Alshehhi. Both had taken pilot lessons at the flight school. In the spring of 2000, both had entered the United States legally using visitor visas, and in September 2000 had requested that the INS change their status from that of "visitor" to that of "vocational student" so they could attend the flight training school. They did so by filing an I-539 "change of status" application with the INS. The documents opened by the flight school on March 11, 2002, were INS I-20 forms, which informed the school that Atta's and Alshehhi's applications had been approved more than seven months earlier – Atta's in July and Alshehhi's in August 2001. Within a day, media across the country were reporting the story, and the INS came under intense criticism.

On March 13, 2002, President George Bush directed the Attorney General to investigate why the student status notifications were mailed to the flight school six months after the terrorist attacks. The Attorney General requested that the Office of the Inspector General (OIG) investigate the circumstances surrounding the INS's sending of the I-20 forms to Huffman Aviation, including the source of the delay in the processing of the forms and the failure to stop their delivery.

### **I. The OIG Investigation, Scope of the Report, and Conclusions**

At the time the OIG received the Attorney General's request, we had already begun two reviews that were substantively related to the Huffman Aviation incident. First, the OIG was examining the INS's admissions of Atta into the United States on three separate occasions. In addition, the OIG had initiated a review of the process by which the INS tracks and monitors foreign students who enter the United States.

In order to provide greater context to the investigation requested by the Attorney General, the OIG accelerated our review of Atta's entries into the United States and broadened that inquiry to include a review of Alshehhi's entries into the United States. In addition, the OIG completed its review of the INS's foreign student tracking system. The results of both of those reviews are incorporated into this report along with the results of the OIG investigation requested by the Attorney General.

To conduct our review, we assembled a team of three attorneys, four special agents, and three program analysts. The OIG team conducted almost 100 interviews of personnel from INS Headquarters; the INS Texas Service Center in Dallas, Texas; and the INS's Miami, New York, Newark, and Atlanta Districts, including inspectors at airports in these districts. We also interviewed personnel from the Federal Law Enforcement Training Center (FLETC); the Federal Bureau of Investigation (FBI); Huffman Aviation; and two INS contractors involved in the processing of I-20 forms, Affiliated Computer Services, Inc. (ACS) and Uniband Enterprises.

This report contains three main sets of findings. First, with regard to all but one of Atta's and Alshehhi's entries into the United States, we concluded that the evidence does not show that the inspectors who admitted them acted in violation of INS policies and practices. We were unable to reach any definitive conclusion whether Atta's admission in January 2001 was improper, given the limited record relating to the admission and the inspector's inability to remember the specifics of what was said at the time. However, our review illustrated that, before September 11, the INS did not closely scrutinize aliens who were entering the United States to become students or consistently require them to possess the required documentation before entering the United States.

Second, with regard to the INS's processing of Atta's and Alshehhi's change of status applications and the I-20 forms associated with those applications, we found the INS's adjudication and notification process to be untimely and significantly flawed. Because the INS assigned a low priority to adjudicating these types of applications, a significant backlog existed. As a result, Atta's and Alshehhi's applications were adjudicated and approved more than 10 months after the INS received them, well after both men had finished their flight training course. Even after adjudication, there was another significant delay before the I-20 forms were mailed to the flight school notifying it of the approved applications. This delay occurred because the INS contractor who data entered the information from the forms after approval held

onto them for 180 days before mailing them to the school. We found that the contractor handled these forms consistently with its handling of other I-20 forms and its interpretation of the requirements of its contract with the INS. The evidence suggests, however, that the contract was written so that the I-20 forms would be returned to the schools within 30 days, and we criticize the INS for failing to monitor adequately the requirements and performance of the contract.

We also criticize INS personnel for failing to consider the I-20s and thereby failing to make the FBI aware of the I-20s. No one in the INS took responsibility for locating the forms or notifying the FBI of their existence. While we recognize that the I-20 forms were not significant to the FBI's investigation, no one from the INS told the OIG that they did not pursue the documents for this reason. Rather, everyone we interviewed said that they did not even consider the I-20s. This oversight was a failure on the part of many individuals in the INS.

Third, with regard to our review of the INS's system for monitoring and tracking foreign students in the United States, it is clear that the INS's current, paper-based system is antiquated and inadequate. The INS is developing and will soon implement an automated computer tracking system – the Student and Exchange Visitor Information System (SEVIS). SEVIS will be a significant advance and will help address many of the failings of the current system. But SEVIS alone will not solve the problems of the INS's tracking of foreign students. For example, the INS must review and properly re-certify the thousands of schools that are currently certified to enroll foreign students, must ensure that its employees and schools timely and accurately enter information into SEVIS, and must ensure that the information from SEVIS is analyzed and used adequately. We also believe that it is unlikely that the INS will be able to meet the January 30, 2003, deadline for full implementation of SEVIS.

At the end of the report, we provide 24 systemic recommendations to help address the deficiencies in INS practices and procedures that we found in our review and in the INS's proposed implementation of SEVIS.

## **II. Background**

### **A. Immigration processes**

Because immigration regulations are complex, we first set forth in the report a description of basic immigration terminology and processes relevant to

the issues we investigated. In particular, we describe the processes through which foreigners who want to study in the United States can enter the country legally.

To enter the United States, an alien must present a valid passport and valid visa to an immigration inspector at designated land, sea, and air ports of entry (POEs). Visas are issued by the U.S. Department of State and authorize aliens to enter the United States for specified purposes. When an alien arrives at a POE, an INS immigration inspector reviews the alien's documents and seeks to determine, based on the alien's answers to questions posed by the inspector, whether the alien's purpose for entering the country matches the purpose associated with the visa.

According to immigration regulations, aliens may enter the United States and attend school full time or part time through several different procedures. Aliens who intend to take classes but who do not intend to pursue full-time schooling may enter as visitors using a B-1/B-2 visitor visa provided the classes are "incidental" to the alien's primary purpose of pleasure (B-2) or are part of a business-related purpose (B-1).

Aliens who want to engage in a full-time course of study in the United States can obtain legal permission to do so in two ways. The first method, used by the majority of foreign students, is the student visa process in which the applicant requests a student visa in the applicant's country of residence. The State Department screens the applicant and determines whether to issue the visa.

In the second method, aliens who already have entered the United States through other legal means, such as with a visitor visa, may ask the INS to change their status to students. To do so, aliens must file INS form I-539 requesting a change of status, establish that they are enrolled in school full time, establish that they are in a valid status at the time of application, and demonstrate their financial ability to pay for the schooling. This method – the one pursued by Atta and Alshehhi – does not involve the State Department nor does it involve the issuance of a new visa.

## **B. Chronology of Atta's and Alshehhi's entries into the United States and change of status applications**

Atta and Alshehhi both possessed valid passports and visitor visas, issued at United States consulates abroad, which were valid for multiple entries into

the United States. Atta first entered the country through Newark International Airport as a visitor in June 2000. Alshehhi first entered the country as a visitor also through Newark International Airport in May 2000. INS immigration inspectors routinely admitted them and authorized them to remain in the country for six months, which was the typical period of admission for aliens holding visitor visas.

Atta and Alshehhi enrolled in the professional pilot's course at Huffman Aviation in July 2000. In September 2000, they applied to change their status from visitors to that of vocational students by submitting I-539 applications to the INS's Texas Service Center in Dallas, Texas. The Texas Service Center is one of five INS Service Centers that process and adjudicate many types of INS applications. Atta and Alshehhi also submitted the required INS form I-20, the Certificate of Eligibility for Nonimmigrant Student Status, which is issued by schools certified by the INS to enroll foreign students once students have been accepted to the school. The I-20 form includes two parts that reflect identical information about the school and the student's proposed course of study, including the dates of the course of study. Once the INS approves the application, the adjudicator stamps both parts of the I-20. One part of the I-20, the student copy, is sent to the student and eventually the other part, the school copy, is sent to the school. After adjudication of the application, the school copy of the I-20 is mailed to ACS in London, Kentucky. This INS contractor data enters information from the I-20s for eventual uploading into an INS database and later mails the I-20s to the schools. The INS does not retain copies of the I-20s in its files.

In December 2000, while their change of status applications were pending, Atta and Alshehhi finished their flight training at Huffman Aviation. Both separately left the country in January 2001 and separately returned a few days later. Each was admitted into the United States by INS inspectors after being referred to secondary inspection. Each later left and re-entered the country a third time. Alshehhi left in April 2001 and returned in May 2001; he was admitted this last time on a visitor visa for six months, until November 2001. Atta left in July 2001 and returned a few days later; he was admitted on a visitor visa until November 2001.

On July 17, 2001, the INS approved Atta's I-539 change of status application that had been filed 10 months earlier. On August 9, 2001, the INS approved Alshehhi's I-539 change of status application. As noted previously,

Atta and Alshehhi had finished their flight training program at Huffman Aviation more than six months earlier.

After the INS adjudicated Atta's and Alshehhi's change of status applications, it sent ACS the school copy of their I-20 forms, which ACS received on September 24, 2001. Consistent with its interpretation of its contract, ACS data entered information from the school copy of Atta's and Alshehhi's I-20 forms and retained the forms. After waiting approximately 180 days, ACS mailed the school copy of the I-20s to Huffman Aviation in March 2002.

### **III. The INS's Handling of Atta's and Alshehhi's Entries and Change of Status Applications**

The OIG investigated several different but interrelated aspects of Atta's and Alshehhi's contacts with the INS. First, we examined their three entries into the United States to determine whether the INS inspectors who admitted them acted in accord with INS policies and policies. We also investigated the INS's processing of Atta's and Alshehhi's change of status applications to determine why the INS took over 10 months to adjudicate the applications and why it took another 7 months for Huffman Aviation to receive its copies of the I-20 forms. In addition, we examined whether the INS adjudicator who approved Atta's and Alshehhi's change of status applications did so appropriately. Finally, we investigated why the INS failed to retrieve the I-20s from the contractor after September 11 and before they were sent to Huffman Aviation.

#### **A. Atta's and Alshehhi's Entries into the United States**

Atta and Alshehhi each entered the United States three times. We reviewed each of these entries, the decisions made by the INS inspectors who handled their entries, and the INS policies that relate to these entries.

On each occasion, Atta and Alshehhi entered the United States with valid passports and visitor visas that were good for multiple entries. The primary immigration inspectors who admitted them during their first and third entries did so routinely, without referring them to the more intensive inspection process known as secondary inspection. We found no indication that the primary inspectors were presented with or were aware of any information that would have caused them to refer Atta and Alshehhi to secondary inspection. The evidence indicates that, given the information available to the inspectors at

the time of the admissions, the primary inspectors did not violate INS policies and practices by admitting them.

However, during each of their second entries – Atta on January 10, 2001, through the Miami International Airport and Alshehhi on January 18, 2001, through the John F. Kennedy Airport – both were referred to secondary inspection. After interviews in secondary inspection, INS secondary inspectors admitted Atta and Alshehhi as visitors. Because the secondary inspectors knew that Atta and Alshehhi had filed change of status applications, the inspectors should have questioned them about their intent with respect to taking flight training courses and whether they were seeking to re-enter the United States to go to flight school full time. If the inspectors determined that Atta and Alshehhi intended to be full-time students, the inspectors should have required them to present student visas, which they did not have, rather than their visitor visas.

On the other hand, if Atta and Alshehhi stated that they intended to attend classes on a part-time basis only, the inspectors could have admitted them based on their visitor visas. However, because the available record with respect to Atta is limited and the inspector had only a vague recollection of his interview of Atta, we were not able to conclude whether the inspector properly or improperly admitted Atta. The evidence with respect to Alshehhi suggests that the inspector's admission of Alshehhi was not in violation of INS practices.

We also considered whether Atta's and Alshehhi's departures while their I-539 applications for change of status were pending should have had an effect on their ability to re-enter the country. The INS's policy is that an alien who leaves the country while his change of status application is pending abandons that application. However, abandonment of a change of status application does not automatically mean that an alien is inadmissible when he returns to the United States and seeks re-entry. The INS inspector is required to assess the alien's purpose at the time of re-entry. If Atta and Alshehhi stated that they intended to attend school part time, they would have been admissible again with their multiple-entry visitor visa, regardless of their abandonment of their change of status applications.

Yet, Atta's and Alshehhi's admissions highlighted that INS inspectors lack important information when assessing aliens' eligibility for admission into the United States. For example, primary inspectors do not learn through automated checks whether an alien has a change of status application pending.

Also, although both Atta and Alshehhi had completed their flight schooling by the time they sought to re-enter the country in January 2001, the inspectors who admitted them were not aware of that fact, since the INS did not collect this information about foreign students.

Our review of Atta's and Alshehhi's admissions also illustrated another troubling INS practice. We were consistently told by INS inspectors at the POEs we visited that aliens who intended to enter the United States to become full-time students and who lacked the required student visa would likely have been admitted through the waiver process. Although Atta and Alshehhi were not admitted through the waiver process, we found that INS managers, supervisors, and inspectors believed incorrectly that they have broad discretion to admit aliens who do not have the required passport and visa through this process. In fact, the law and INS policy limit the circumstances in which an alien who lacks the proper passport or visa can be admitted with a waiver to "unforeseen emergencies." But the INS's prevailing philosophy in dealing with foreign students at the POEs before September 11 was that students were not a concern or a significant risk worthy of special scrutiny. Therefore, INS inspectors and supervisors would admit students through the waiver process when they appeared at POEs without the proper documentation if they did not appear to have a criminal record or disclose any other evidence of inadmissibility. Thus, although the INS had clear policies on when a waiver was appropriate, those policies were not followed or enforced.

## **B. Atta's and Alshehhi's change of status applications and I-20 forms**

We examined several aspects of Atta's and Alshehhi's applications for change of status. Specifically, we investigated the length of time INS took to process Atta's and Alshehhi's I-539 applications and I-20 forms, whether the change of status was properly granted, and why the I-20s were mailed after September 11.

### **1. Delay in processing**

Huffman Aviation received its copies of Atta's and Alshehhi's I-20 forms in March 2002, more than a year and a half after the forms were submitted to the INS in September 2000, and approximately seven months after the I-539 change of status applications were approved. We found that these lengthy delays were due to two primary causes: a significant backlog in processing I-

539s at the INS's Texas Service Center and the contractor's storage of the I-20s for 180 days before mailing them to the schools.

First, Atta's and Alshehhi's applications were not adjudicated in a timely fashion. Historically, processing I-539 applications has been a low priority for the INS. By July 2001, at the Texas Service Center, which handled Atta's and Alshehhi's applications, the processing time for I-539 applications reached 282 days. Therefore, Atta's and Alshehhi's applications were not adjudicated until 10 months after the INS received them, and many months after they had completed their flight training course.

Second, after the INS adjudicated the two men's change of status applications, it mailed the school copy of the I-20 forms to ACS, the contractor that data entered information from the forms for inclusion in INS databases. ACS did not mail the forms to Huffman Aviation for almost 180 days after receiving them in September 2001. ACS's handling of Atta's and Alshehhi's forms was consistent with its understanding of its contractual obligations and with its handling of other I-20 forms it processed at that time. We found some evidence, however, that the INS had intended for the I-20s to be mailed to schools within 30 days after data entry, not 180 days. But the evidence showed that INS officials were not familiar with the terms of the contract and exercised minimal oversight of the contract. We fault the INS for failing to pay more attention to the performance of this contract.

## **2. Adjudication of the change of status applications**

We found that the adjudicator who approved Atta's and Alshehhi's change of status applications did so in accord with INS policies and practices. But we also found that these policies and practices were flawed. Most important, the adjudicator did not have complete information about Atta and Alshehhi before adjudicating their applications. If the adjudicator had full information, he should have denied their applications. For example, the adjudicator did not learn that Atta and Alshehhi had already completed their flight training because the INS did not collect that information. The adjudicator also did not learn that Atta and Alshehhi had departed the United States twice while their change of status applications were still pending, which the INS deems to be an abandonment of the applications. Although INS databases contained this information, adjudicators were not required to check the databases before making a decision.

However, it is important to note that even if the adjudicator had denied their change of status applications, Atta and Alshehhi were admitted into the United States as visitors during their third entries in July and May 2001 and were authorized to stay until November 2001. Therefore, even if the adjudicator had denied their change of status applications, that denial would not have invalidated Atta's and Alshehhi's status as visitors entitled to remain in the United States through September 11.

### **3. Failure to stop the processing and mailing of the I-20s**

We do not believe that ACS was at fault for not stopping Atta's and Alshehhi's forms from being mailed to Huffman Aviation. As a contractor, ACS takes its direction from the INS. It handled these forms consistent with other forms, and in accord with its understanding of the requirements of the contract. No one at the INS asked ACS to identify or locate Atta's and Alshehhi's I-20s. Absent instructions from the INS, ACS managers had no independent responsibility to check its records to verify whether it possessed documents related to any September 11 terrorists. Moreover, ACS's handling of I-20s is a clerical process that is mostly automated. For these reasons, we concluded that ACS bears no responsibility for failing to stop delivery of the I-20 forms.

Rather, the fault lies with many INS employees who could have, and should have, considered the existence of the I-20 forms and brought them to the attention of the FBI. On September 11, two industrious Texas Service Center personnel had determined through database searches that the Texas Service Center had adjudicated Atta's and Alshehhi's change of status applications. The next day they retrieved the Texas Service Center files on Atta and Alshehhi and faxed copies of the documents to the FBI. Soon thereafter, the FBI requested the originals of these files, and the INS provided them to the FBI.

These files did not contain the I-20s because the student copies had been returned to the applicants months earlier and the school copies had been sent to ACS for processing. Yet, no one in the INS took any action to locate the school copies of the I-20s, inform the FBI of their existence, or even consider where these forms were in the process. We believe that managers and personnel from the Texas Service Center where the applications had been processed, managers in the Immigration Services Division in INS Headquarters who supervised the service centers, and managers in the Enforcement Division

in INS Headquarters who were involved in the terrorism investigation were at fault for failing to inform the FBI about the existence of the I-20s.

When interviewed by the OIG, these INS personnel acknowledged that they were aware that I-20s were part of the change of status process and acknowledged that they did not inquire about the school copies of the I-20s associated with Atta's and Alshehhi's change of status file. They conceded that they did not think about trying to obtain the I-20s for the FBI, and they never informed the FBI about the existence of the I-20s before they were mailed in March 2002.

Several of these INS managers told the OIG that they instructed their subordinates to ensure that the FBI had what it needed and suggested that their inaction was attributable to the fact this was an FBI case, not an INS case. Several individuals also stated that they were not aware that the contractor stored the I-20s for 180 days and therefore, even if they had thought about the I-20s, they would have assumed that the forms already had been mailed to the school.

These arguments are unpersuasive. While we recognize that the INS's failure to provide the I-20s did not hinder the FBI's investigation, it was the INS's responsibility to ensure that all its documentation relating to the terrorists was identified for the FBI. No one at the INS assessed whether all information associated with Atta's and Alshehhi's change of status files – which was information that only the INS had knowledge of – might be useful to the FBI. No one thought to even inquire about the I-20s related to Atta's and Alshehhi's change of status applications or find out where they were. In our view, this was a widespread failure on the part of many individuals in the INS.

#### **IV. The OIG's Evaluation of the INS's Foreign Student Program**

In response to concerns about how the INS tracks foreign students, we evaluated the INS's processes for admitting foreign students and for certifying schools as eligible to receive foreign students. We also evaluated the INS tracking systems for foreign students – the paper system that exists now as well as SEVIS, the computer system the INS is developing.

The State Department is responsible for issuing student visas to foreign students who want to study in the United States. It is the responsibility of the INS, however, to determine which schools are entitled to accept foreign

students, to inspect the documentation of persons arriving with student visas, to keep track of the entries and exits of foreign students, to know whether students are continuing to maintain their status once in this country, to facilitate the removal of students once their status ends, and to approve appropriate requests by aliens who are in the country through some other classification to acquire student status. Responsibility for each of these obligations is divided among several different offices, divisions, and branches within the INS, as well as among private contractors.

In the past, the INS has not adequately handled these responsibilities. The INS's foreign student program historically has been dysfunctional, and the INS has acknowledged for several years that it does not know how many foreign students are in the United States. In addition, the INS lacks accurate data about the schools that are authorized to issue I-20s, the students who obtain student visas and student status, the current status of those students, and whether fraud is being perpetuated in the foreign student program.

For example, an important component of the foreign student program is the school certification process, which allows the INS to ensure that the school is legitimate and not simply an operation designed to assist foreigners to enter or remain in the country fraudulently. Yet, INS district offices assign the responsibility for approving and re-certifying schools to adjudicators or inspectors only as a collateral duty. We found that these inspectors and adjudicators – called “schools officers” – do not adequately review the schools' applications for certification or re-certification. In addition, the INS rarely conducts site visits of schools prior to or after certification and relies primarily on written representations from the schools.

An example of the result of this deficiency was the INS's certification of Huffman Aviation. As part of our review we obtained and reviewed the INS's file on Huffman Aviation, which was certified by the INS in 1990 to accept foreign students. We concluded that based on the available evidence, Huffman Aviation did not then nor does it currently meet the INS's certification requirements because its students do not appear to be enrolled in a full course of study, as required by INS regulations. We believe that a site visit, which never occurred, would have provided the INS more accurate information with which to make its determination about Huffman's certification.

In addition, INS investigators and adjudicators consistently reported to us that they believe that fraud with I-20 forms is prevalent. The current forms contain few security features and are relatively easy to counterfeit. Schools

receive multiple blank forms, and many schools that are no longer approved to issue such forms still retain a supply of them.

The INS's current database for recording information about the status of foreign students and schools relies on information from paper forms that are supposed to be sent to the INS and uploaded into a database. But the information that is inputted into this database is incomplete and unreliable. Thus the database is riddled with inaccuracies.

The INS's implementation of its new automated system to track foreign students – SEVIS – will help solve some of the problems the INS has had tracking foreign students. SEVIS will improve the data collection on students and schools. Schools will no longer be required to fill out forms that must be mailed to the INS and then sent by the INS to a contractor for data entry. Instead, the schools will enter information about students directly into SEVIS or into its own computer systems that will then upload to SEVIS. Through SEVIS, the INS and schools also will be able to identify more easily when a student's change of status has been approved because the student's SEVIS record will be electronically updated by the INS service centers once processing is complete. SEVIS will eliminate the current manual process in which the paper I-20 is returned to the school after adjudication of the change of status form. In addition, the INS and schools will be able to determine easily through SEVIS when and where a student entered the United States.

SEVIS also should help the INS detect I-20 fraud by schools and students. Only INS-approved schools with access to SEVIS will be able to create I-20 forms for students. The INS will be able to automatically decertify schools that violate program requirements by invalidating the school's password, thereby preventing the schools from issuing I-20s. Since I-20s will be generated only through SEVIS, fraudulent or expired I-20s will be more difficult to use. In addition, any I-20s not used by the student can be automatically invalidated through SEVIS, preventing others from fraudulently using them. INS investigators also will be able to identify useful information through analyses of SEVIS data, such as identifying schools that have significant numbers of students who have been admitted longer than typical degree programs require.

Yet, despite the improvements anticipated with the implementation of SEVIS, there are many problems in the INS's student program that SEVIS alone will not solve. First, the INS still must manually review and approve the applications of schools seeking certification or re-certification to enroll foreign

students. To properly certify, recertify, and monitor schools, we believe that the INS should assign full-time personnel to these tasks. Unless INS personnel conduct on-site visits and follow up on questionable information submitted by schools, many current deficiencies will continue to exist.

The INS still has no formal, mandated training program for the officials at each school who have the responsibility for complying with INS record-keeping and reporting requirements, for monitoring violations of student requirements to the INS, and for notifying the INS of material changes in the schools' programs, accreditation, and level of education offered. While school associations provide some training, particularly for the larger public and private universities, the training is not geared toward smaller schools. INS officials told us that many school employees who deal with the foreign student program are untrained and unaware of INS regulations.

Similarly, INS personnel assigned to approve and monitor schools also are not provided formal training. We learned that many are uncertain as to what they are supposed to be looking for when certifying schools. These INS employees also commented on the lack of clarity in the regulations and INS guidelines for the approval process. The INS needs to develop a training program for INS and schools officers, and provide clear guidelines describing their responsibilities and INS requirements.

Furthermore, for SEVIS to be effective the INS must ensure that the schools are complying with the requirement to timely and accurately input data into SEVIS. To date, the INS has not formulated any concrete plans for conducting or requiring verifications of the accuracy of the data that the schools enter into SEVIS.

Also, while SEVIS should improve data collection, the information only will be useful if the INS monitors and analyzes the information and investigates instances of potential fraud. The INS has not determined who, if anyone, would perform these analyses. Enforcement to uncover school fraud historically has been a low priority at the INS, and investigative resources devoted to this issue have been limited. Although better information will be available on student and school fraud, it is not clear that the INS will use this information any more fully than in the past.

We also have serious concerns about the INS's ability to fully implement SEVIS by January 30, 2003, as required by recent regulations proposed by the INS. Although the INS plans to have the system operating by July 1, 2002, the

INS intends to re-certify all of the approximately 70,000 schools currently authorized to issue I-20s and is requiring re-certification as a prerequisite to schools gaining access to SEVIS. The INS plans to start the re-certification process this summer, but it is still in the process of determining how to do this and must publish new regulations before this re-certification process will begin. In addition, the INS still has to assign and train personnel to perform the re-certifications and notify all the schools of the re-certification procedures. We question whether the INS will be able to complete this huge undertaking before January 30, 2003.

Unless the INS addresses these and other critical issues, the impact of SEVIS will be minimal.

## **V. Recent Changes in the INS's Foreign Student Program**

Since September 11, 2001, the INS's focus on foreign students has changed dramatically. In the past, the INS's philosophy has strongly favored admitting foreign students, viewing them as relatively low risk. After September 11, tighter regulatory controls have been proposed to make it more difficult for aliens to obtain student status and to more closely scrutinize persons entering the country who might later attempt to become students. In addition, on March 15, 2002, the INS implemented procedural changes that will result in closer examination of change of status applications for persons who want to become students.

We discuss some of these proposed regulatory and processing changes in the report. We believe that many of these changes that address issues raised by Atta's and Alshehhi's cases will be beneficial. For example, additional database checks are now required to be conducted before change of status applications can be approved, students may not begin a course of study until the I-539 petition has been approved, and the INS data entry contractor now must send the school copy of the I-20 to the school in less than 30 days.

In some cases, however, we do not believe that INS has fully considered how the changes will be implemented and the consequences of the changes on the INS. For example, the INS now requires adjudicators to check all I-539 change of status applications against certain lookout databases before rendering a final decision. We found that at the time that INS Headquarters issued this policy change, service center adjudicators did not have access to those databases at their workstations. In the last few weeks, we determined that adjudicators in the TSC have acquired access to and training on how to use

IBIS. However, the INS has not provided guidance about what to do with the information learned from the checks. In addition, the INS has not analyzed how the new requirement will affect the length of time service center adjudicators are expected to take processing each application. If this is not adjusted, adjudicators will continue to face time pressure that will discourage them from conducting thorough searches or following up on possible leads.

## **VI. Recommendations**

At the end of the report, we make 24 systemic recommendations concerning various aspects of the INS's foreign student program that were implicated by our review of the INS's contacts with Atta and Alshehhi and our evaluation of the INS's tracking of foreign students. Our recommendations address the overall management of the INS's foreign student program, resource issues, SEVIS, and other program areas.

Our review found that the INS functions without vital information about foreign students and aliens who have applied to change their status to that of students. Inspectors, adjudicators, and investigators make critical decisions about aliens without having access to fundamental information that could affect their decisions. While we recognize that the INS is a large agency handling many different programs and missions, the result of the fragmentation of the foreign student program is that there is not sufficient accountability for a program that admits approximately 500,000 aliens into the country every year. Despite implementing major changes in the foreign student program since September 11, however, the INS continues to operate the program without an overall coordinated plan. For this reason, we believe that the INS should consider appointing a foreign student program manager to coordinate, and be accountable for, immigration issues affecting foreign students.

We also make several recommendations concerning SEVIS and the foreign student program. We recommend that the INS more closely review the schools that will be permitted to accept foreign students, including the approximately 70,000 that must be reviewed prior to the implementation of SEVIS. In addition, we recommend that the INS conduct re-certifications of those schools at regular intervals. The INS should develop a plan for training both INS employees and school employees on how to use SEVIS. The INS should ensure that schools are entering timely and accurate information into SEVIS and that specific and sufficient INS personnel are responsible for

analyzing the data collected in SEVIS and acting on cases of suspected fraud. The information is only useful if it is accurate and is used by the INS.

We also set forth recommendations related to the INS's proposed regulatory and processing changes aimed at increasing scrutiny of foreign students. As one example, the INS has proposed to require that aliens who apply to change their status to that of students be approved before they are eligible to enroll in classes. For this to work the INS must maintain a fast processing time for student change of status applications, which historically it has not been able to do, in order to avoid penalizing students. The INS also should determine how it will handle aliens who have applied to become students but whose applications have not been adjudicated prior to the start of their classes. The INS should advise I-539 applicants for student status of the requirement that their applications must be adjudicated prior to beginning school and also advise the schools of the procedure to be followed if the INS has not adjudicated the application prior to the start of school.

The INS policies and guidance necessary to implement these changes should be expeditiously and clearly communicated to INS employees across the country. We have noted in this report, as well as in many other OIG reports, problems with INS policies not being known, written, widely disseminated, or uniformly enforced throughout the INS. Although INS Field Manuals are a logical repository for policies and procedures, the Inspector's Field Manual and the Adjudicator's Field Manual are not comprehensive or complete. In addition, in this and other OIG reviews, we found that adjudicators and inspectors often are not made aware of changes to the manuals because policies distributed via memoranda often never reach line inspectors and adjudicators. As a result, field offices develop their own practices that are sometimes inconsistent with INS policy or the law.

The INS must improve its systems for disseminating policy memoranda and for ensuring that line employees become aware of and follow these policies. We recommend that the INS expeditiously complete and update its field manuals. In addition, it should implement a more effective system for disseminating policies and procedures other than sending the documents to the head of an INS field office. Only if the INS has a system in place that ensures that policies and changes are received and understood can employees be held accountable for following them.

We believe that implementation of these recommendations will help address significant problems with the INS's foreign student program, which

has been dysfunctional for many years. Although the INS is revising many of its processes and implementing a new computer system to track and monitor foreign students, these changes will result in minimal improvement if the INS does not improve its overall management of the foreign student program.

# CHAPTER ONE

## INTRODUCTION

### I. Introduction

On September 11, 2001, 19 terrorists hijacked 4 airplanes as part of an attack on the Pentagon in Washington, D.C. and the World Trade Center Towers in New York City, New York. Three of the planes were flown into the buildings, resulting in the deaths of over three thousand individuals, the complete destruction of the Trade Center Towers, and extensive damage to the Pentagon. The fourth plane crashed in Southwestern Pennsylvania, killing all 44 people onboard. Mohamed Atta, an Egyptian citizen, is believed to have been the pilot who flew American Airlines flight number 11 into the Trade Center's North Tower. Marwan Alshehhi, a citizen of the United Arab Emirates, is believed to have flown United Airlines flight number 35 into the South Tower. Both terrorists died in the attacks.

Six months later, on March 11, 2002, Huffman Aviation International, a small flight training school in Venice, Florida, opened official documents sent by the Immigration and Naturalization Service (INS) relating to Atta and Alshehhi. Both had taken pilot lessons at the flight school. Although Atta and Alshehhi had entered the United States legally in the spring of 2000 with visitor visas, in September 2000 they had requested that the INS change their nonimmigrant status from that of "visitor" to that of "vocational student" so they could continue attending flight training school. The documents opened by the flight school on March 11, 2002, were INS I-20 forms, which indicated that Atta's and Alshehhi's requests for vocational student status had been approved. Within a day, media across the country were reporting the story, and the INS came under intense criticism.<sup>1</sup> In a news conference on March 13, President George Bush stated that he was "stunned" and angry after he read about the incident in the newspaper. The mailing of these forms was cited by many as a further example of why the INS needed to be radically reformed and improved.

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<sup>1</sup> The early criticism of the INS's actions implied that the INS had approved Atta's and Alshehhi's request to change their status after September 11. In fact, the approval had occurred several months before the terrorist attacks. It was the notification to the school that arrived subsequently.

President Bush directed the Attorney General to investigate why the student status notifications were mailed after Atta and Alshehhi were recognized worldwide as terrorists who helped perpetrate the September 11 attacks. By memorandum dated March 13, 2002, the Attorney General requested that the Office of the Inspector General (OIG) conduct a “thorough review of the circumstances surrounding the [INS’s] sending of documents to the Huffman Aviation International flight school of Venice, Florida, which notified the school of the approved vocational student status of Mohamed Atta and Marwan Alshehhi six months after the terrorist attacks of September 11, 2001.” The Attorney General asked that the OIG’s review include “not only the INS’s failure to stop delivery of the notification letters but also the source of the seven-month delay in the processing of these notification letters.” The Attorney General asked that the OIG’s investigation and report of its findings be completed expeditiously.

At the time the OIG received the Attorney General’s request, we had already begun two reviews that were substantively related to the incident that gave rise to the Attorney General’s request. The OIG was reviewing the INS’s admissions of Atta into the United States. In addition, in November 2001 the OIG had initiated a review of the process by which the INS tracks and monitors foreign students who enter the United States.

In order to provide greater context to the investigation requested by the Attorney General, the OIG expedited and completed its review of Atta’s entries into the United States. We also broadened that inquiry to include the appropriateness of Alshehhi’s entries into the United States. In addition, the OIG completed its review of the process by which foreign students enter the United States and are tracked and monitored by the INS. The results of these reviews are incorporated into this report.

To conduct our review, the OIG assembled a team of three attorneys, four special agents, and three program analysts. The team conducted almost 100 interviews over a 3-week period beginning on March 18, 2002. We interviewed personnel from INS Headquarters; the INS Texas Service Center in Dallas, Texas; and the INS’s Miami, New York, Newark, and Atlanta Districts, including inspectors who work at airports in these districts. We also interviewed personnel from the Federal Law Enforcement Training Center (FLETC); the Federal Bureau of Investigation (FBI); and three private companies, Affiliated Computer Services, Inc. (ACS); Uniband Enterprises; and Huffman Aviation International.

## **II. Organization of the Report**

This report is organized into nine chapters. Chapter One contains this introduction. Chapter Two provides an overview of the INS's organizational structure as it relates to our investigation, as well as background information on visitor and student visas and the change of status process.

Chapter Three details our review of Atta's and Alshehhi's entries into the United States and our analysis of the actions of the INS inspectors who admitted them. We first provide an overview of the inspection process by which a nonimmigrant enters the country, including routine questions asked by inspectors, a description of the computer systems used by inspectors, and the secondary inspection process. We examine Atta's three entries into the United States, including his referral to the INS's secondary inspection process during his second entry, the reasons for his admission on each occasion, and our analysis of those admissions. Next, we describe Alshehhi's three entries, including his referral to secondary inspection during his second entry, the reasons for his admission on each occasion, and our analysis of those admissions.

Chapter Four addresses the questions regarding Atta's and Alshehhi's change of status applications and how the notifications of the decisions on those applications were sent to Huffman Aviation six months after the terrorist attacks. This chapter also describes generally the processing of INS forms I-539s (the application for change of status) and I-20s (the form providing school and course information), and traces how the INS handled the applications and files of Atta and Alshehhi. We also describe how private contractors participated in the processing of Atta's and Alshehhi's change of status forms. We discuss the reasons that the INS took several months to process Atta's and Alshehhi's applications.

In Chapter Five, we discuss our findings and conclusions regarding the reasons why the INS documents were not stopped from being sent to Huffman Aviation after September 11, 2001.

The OIG's evaluation of the INS's tracking of foreign students is described in Chapter Six. We examine the INS's processes for certifying schools as eligible to receive foreign students, the INS's current process for collecting information on foreign students, and the Student and Exchange Visitor Information System (SEVIS), an automated system currently being developed by the INS to track information about foreign students.

In Chapter Seven, we examine the INS's proposed changes to the federal regulations concerning the admission of nonimmigrants, the INS's proposed changes for the foreign student program, and specific procedural and operational changes made by the INS in light of the events that gave rise to this report. In Chapter Eight, we set forth our recommendations for systemic improvements in the INS and its foreign student program. Chapter Nine summarizes our conclusions.

## **CHAPTER TWO**

### **BACKGROUND**

This chapter provides background on the organizational structure of the INS, basic information on the visa system, how students are admitted into the United States, and how nonimmigrants in the United States can change their status to students.

#### **I. Organizational Structure of the INS**

The INS is currently organized into three management components – Headquarters, three regions, and 33 districts in the United States.<sup>2</sup> The districts are referred to collectively as “the field.”

The districts are managed by a District Director, a Deputy District Director, and several Assistant District Directors. The districts are divided into various divisions such as Investigations, Inspections, Management, and Examinations (or Adjudications). Each division is led by an Assistant District Director.<sup>3</sup>

The processing of nonimmigrants who arrive at points designated as legal places through which to enter the country – known as ports of entry – is handled by INS immigration inspectors who are stationed at airports, seaports, and highways throughout the United States. A district’s Inspections Division is responsible for overseeing the inspectors within the district.

The INS also operates five regional service centers that process many types of applications formerly handled in the districts. The five service centers are the California Service Center, the Nebraska Service Center, the Texas Service Center, the Vermont Service Center, and the Missouri Service Center. Requests for change of status (form I-539 and the accompanying I-20) – that is, the applications that Atta and Alshehhi filed with the INS – are handled by INS

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<sup>2</sup> The INS has three foreign district offices in Bangkok, Mexico City, and Rome, as well as several other overseas offices.

<sup>3</sup> The three INS regions serve as intermediary managers of the districts – the Eastern Regional Office, the Central Regional Office, and the Western Regional Office. Each regional office is led by a Regional Director and a Deputy Regional Director. Each regional office is also divided into divisions that are led by an Assistant Regional Director.

staff in four of the five service centers. The adjudication of the applications is handled by Center Adjudications Officers. Each of the service centers is headed by a Service Center Director.

The INS is headed by a Commissioner and a Deputy Commissioner. At all times relevant to this report, INS Headquarters, apart from the Commissioner's immediate staff,<sup>4</sup> was divided into four major components, each overseen by an Executive Associate Commissioner: Programs, Field Operations, Policy and Planning, and Management. Each of the four Executive Associate Commissioners reported to the Deputy Commissioner who, in turn, reported to the Commissioner.

Of the four components (called "Offices"), the Office of Field Operations is most significantly involved in the day-to-day operations of the Field and has responsibility for implementing policies. Within the Office of Field Operations, the Enforcement Division is responsible for INS's investigative operations, the Immigration Services Division is responsible for operations in the service centers and adjudicative functions in the district offices, and the Inspections Division is responsible for the inspections process and operations at the ports of entry. The Service Center Directors report through a chain of command to senior managers in the Immigration Services Division.

At the time of the events at issue in this review, the Office of Programs was responsible for policy development and integration of both enforcement and adjudications programs.<sup>5</sup> The Office of Programs was divided into substantive areas, such as adjudications, inspections, and investigations, with each branch led by an Assistant Commissioner. Within the Adjudications Branch, the Business and Trade Section handled policy issues concerning student visas and change of status issues.<sup>6</sup>

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<sup>4</sup> The Commissioner's immediate staff includes the General Counsel and the Directors of the Office of Internal Audit and the Office of Congressional and Public Affairs.

<sup>5</sup> The INS has proposed to move the policy functions of the Office of Programs to other offices within the INS. The policy functions for investigations, inspections, and detention and removal have been placed under the Office of Field Operations. The policy functions for adjudications have been placed under the Office of Policy and Planning.

<sup>6</sup> The Office of Policy and Planning develops and coordinates long-range planning activities, as opposed to the more immediate matters that fell under the jurisdiction of the

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An organizational chart reflecting the INS structure, as it existed in the summer of 2001, is located on the next page.

## **II. Visitor Visas**

Atta and Alshehhi initially entered the country after obtaining B-1/B-2 visitor visas from a United States consulate abroad and later applied for a change of status to become students once they had already entered the country. In this section, we provide a brief description of the visitor visa.

### **A. Entrance of nonimmigrants into the United States**

The Immigration and Nationality Act (INA) provides that aliens may be admitted to the United States as nonimmigrants (that is, aliens who do not intend to permanently reside in the United States), for “such time and under such conditions as the Attorney General may by regulations prescribe.” 8 U.S.C. § 1184(a)(1). Federal regulations provide that every nonimmigrant must present at the time of entry “a valid passport and a valid visa unless either or both documents have been waived.”<sup>7</sup> 8 CFR § 214.1(a)(3). Federal regulations also require that nonimmigrants must depart the United States at the expiration of their authorized period of admission or upon abandonment of their authorized nonimmigrant status. 8 CFR § 214.1(a)(3).

### **B. Description of visitor visa classifications**

The INA defines a visitor as:

an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and

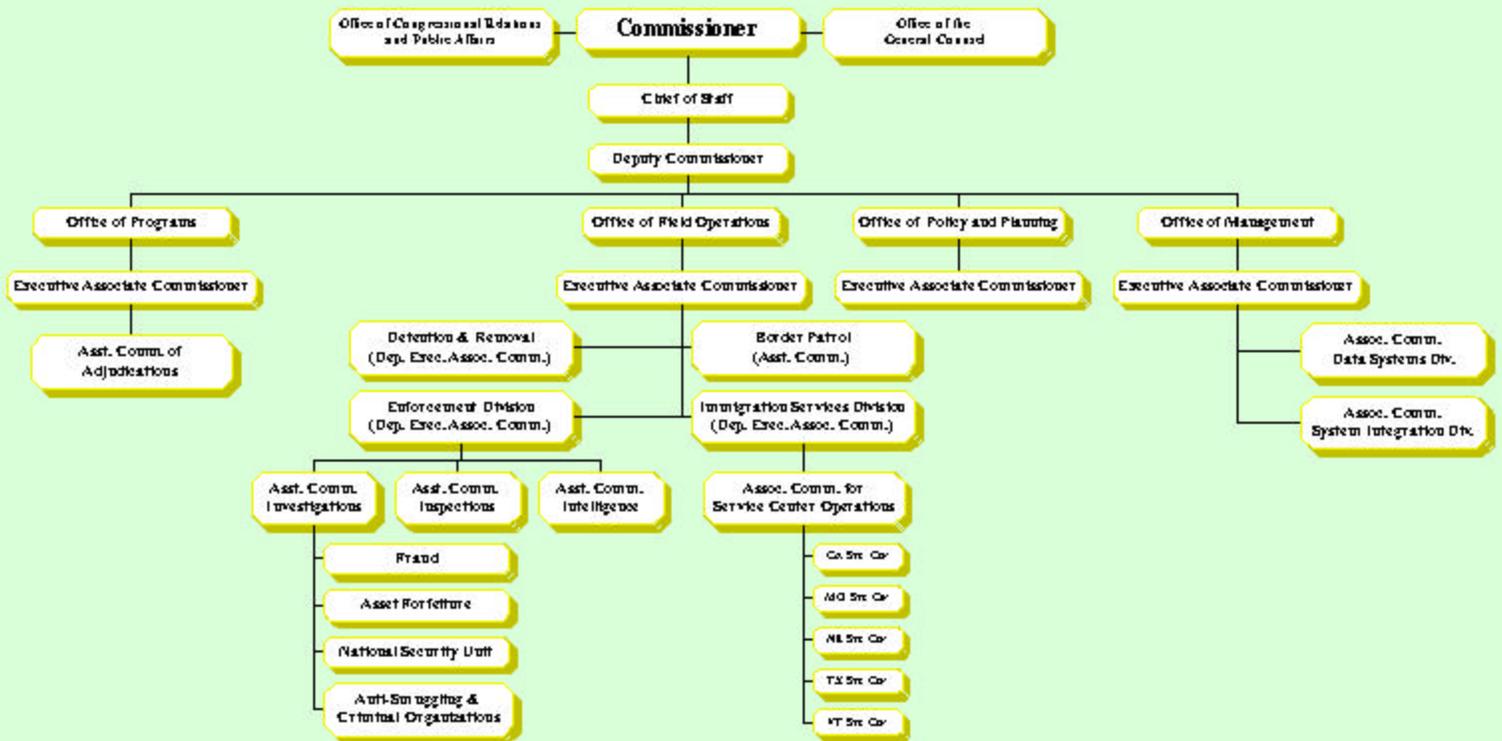
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Office of Programs. The Executive Associate Commissioner for Policy and Planning is also responsible for advising the Commissioner on other issues that cross program lines or have inter-agency implications. The Office of Management is responsible for all administrative issues including financial, human resource, and information resource matters.

<sup>7</sup> Waiver issues are discussed in Chapter Three, Section III B 2, of this report.

## Immigration and Naturalization Service Relevant Positions in Headquarters as of July 2001



who is visiting the United States temporarily for business or temporarily for pleasure.

8 USC § 1101(a)(15)(B). Visitors, or the “B” classification of nonimmigrants, are divided between visitors entering for business purposes, who are given a B-1 designation, and visitors entering for pleasure, who are given a B-2 designation. 8 CFR § 214.1(a)(1)(i) and (ii). The U.S. Department of State issues visas to foreigners outside the United States. The visitor visa is typically issued as a “B-1/B-2” visa, in other words, the visa covers both business and pleasure categories. The INS then designates the entry as either B-1 or B-2 once the alien states his or her purpose at a port of entry and is approved for admission.

The B-1 “business visitor” visa classification allows admission of an alien for a broad range of activities beyond commercial enterprises. Some of these include: aliens employed abroad traveling to the United States for a training program; aliens coming to install, service, or repair machinery at a United States site; alien students at a foreign medical school coming to take an elective clerkship; aliens coming temporarily to attend an executive seminar; alien members of a recognized religious denomination coming temporarily and solely to do missionary work on behalf of the denomination; certain camp counselors and counselors in training; and participants in competitions for prize money. See INS Operations Instructions 214.2(b)<sup>8</sup>; 8 CFR § 214.2(b).

The B-2 “pleasure” visa classification also includes several broad categories: aliens coming for tourism; aliens coming for health-related activities; aliens participating in conventions, conferences, or convocations of fraternal, social, or service organizations; aliens coming primarily for tourism but who will also engage in a short course of study; or aliens coming to attend courses for recreational purposes. See INS Inspector’s Field Manual § 15.4(b)(2)(B).

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<sup>8</sup> The INS’s Operations Instructions provide guidance and interpretations of the regulations for INS employees and also provide additional information concerning the INS’s policies and procedures.

## **C. Length of stay permitted by the visitor visa**

### **1. Period of validity of the visa**

The period of validity for a nonimmigrant visa is the period during which the alien may use the visa in applying for admission to the United States. This period is determined by the State Department when the visa is issued. The period of time that the alien is authorized to stay in the United States on a particular entry is determined by the INS inspector at the port of entry. The period of visa validity has no relation to the period of time that the inspector may authorize the alien to stay in the United States.

All United States nonimmigrant visas are limited to a maximum period of validity of 10 years. The period of validity for particular visas is based primarily on reciprocity: the State Department tries to accord the same treatment on a reciprocal basis that a foreign country accords to nationals of the United States.

Visas generally permit multiple entries, meaning that they may be used by the alien for unlimited entries into the United States for the period of admission determined by the INS for each entry. However, consular officers may limit the number of entries or limit the admissions to specified ports of entries. This is based on such factors as the alien's financial situation and the stated purpose of entry.

### **2. Length of admission under the B-1/B-2 classification**

The standard B-2 admission is for six months.<sup>9</sup> 8 CFR § 214.2(b)(2); see also, INS Operations Instruction 214.2(b). Although B-2 admissions may be granted for up to a maximum of one year, INS policy provides that inspectors require aliens to demonstrate a significant reason for an admission period longer than six months, such as an extended course of medical treatment. 8 CFR § 214.2(b)(1).

While B-1 business visitors also may be admitted for a maximum period of one year, the INS inspectors at the ports we visited told the OIG that they limit the length of stay of an alien with a B-1 visa to the time needed to

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<sup>9</sup> The INS is proposing to change the presumptive length of admission for a B-1/ B-2 visa to 30 days. See Chapter Seven of this report for further discussion of this issue.

accomplish the stated purpose of the alien's visit, plus a few days or weeks in the event that the business purpose takes slightly longer than expected. The INS Operations Instructions state that B-1 visitors shall be admitted only for the period of time that is fair and reasonable for completion of the purpose of the trip.

### **III. Foreign Students**

Foreign nationals also may be admitted to the United States as students. Student status may be conferred on individuals studying full time at academic institutions, which include language schools, or at vocational schools. Foreign students in the United States at academic institutions or language schools are designated as "F-1" students; vocational students are designated as "M-1" students.<sup>10</sup> Flight schools are considered by the INS to be vocational schools.<sup>11</sup>

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<sup>10</sup> The academic student is defined as a "bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States." The vocational student is defined as "an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States." 8 USC § 1101(a)(15)(f) and (m). A "full course of studies" is defined separately for academic and vocational students. For vocational students, a "full course of studies" is defined as at least 12 semester hours if the school is a community college or junior college, 12 hours per week if it is a postsecondary vocational or business school, 18 clock hours of attendance a week if the dominant part of the course consists of classroom instruction in a vocational school, and 22 clock hours of attendance a week if the dominant part of the course of study consists of "shop or laboratory work." 8 CFR § 214.2(m)(9). For academic students, the hours required for a "full course of studies" depend on the type of program (e.g., postgraduate, undergraduate, language school) that the student is taking. 8 CFR § 214.2(f)(6). Students who do not meet these hourly requirements do not qualify for an M-1 or F-1 visa. However, they can be admitted under a B-1/B-2 visa if the inspector determines that their course of study is incidental to their primary purpose of pleasure or for a business related purpose.

<sup>11</sup> In Chapter Six of this report, we discuss general requirements in the foreign student program, such as the requirement that schools be certified by the INS in order to accept

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If an alien intends to enter the United States as a full-time student, the alien must obtain an F-1 or M-1 visa from the State Department at a consulate outside the United States. The student visa process is described more fully in Chapter Six.

Aliens possessing B-1/B-2 visitor visas may change their status to that of a student while in the United States. 8 USC § 1258. To change their status, the aliens must file INS form I-539, Application to Extend/Change Nonimmigrant Status, as well as the INS form I-20, the Certificate of Eligibility for Nonimmigrant Student Status. The I-20 form includes information about the school and the student's proposed course of study, including the dates of the course of study. These forms are sent to an INS service center for processing. Once the INS adjudicates the case and approves it, a copy of the I-20 is sent to the student and eventually a copy is sent to the school.

Applicants are required to file the I-539 prior to the expiration of their current authorized status. 8 CFR § 248.1(b). However, the applicant may start school before filing an I-539.<sup>12</sup> If the applicant files the I-539 before his or her current status expires and the I-539 form is still pending with the INS at the time the applicant's current status expires, the applicant is still legally entitled to be in the United States.<sup>13</sup> 8 USC § 1182(a)(9)(B).

Foreign students are permitted to stay in the United States for different lengths of time, depending on their status and course of study. Academic, or F-1, students are admitted for what is called "duration of status." This means that there is no specific end date; the duration of status lasts as long as the student is "pursuing a full course of study." The federal regulations state "[t]he student is considered to be maintaining status if he or she is making normal progress toward completing a course of studies." Once the student completes his or her studies, the student is given "60 days to prepare for departure from

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foreign students and a school's obligation to notify the INS if a student is no longer enrolled in the school.

<sup>12</sup> The INS has proposed legislation to require nonimmigrants to complete the change of status process before they are permitted to enroll in school. We discuss this proposed change in Chapter Seven of this report.

<sup>13</sup> We discuss the change of status process in more detail in Chapter Four of this report.

the United States.” 8 CFR §214.2(f)(5)(i). Vocational students, or M-1 students, are authorized to be admitted “for the period of time necessary to complete the course of study ... plus thirty days within which to depart from the United States or for one year, whichever is less.” 8 CFR § 214.2(m)(5).

Student visas are not issued with expiration dates. Rather, the inspector determines the length of stay at the POE based on the information on the I-20 and writes on the I-20 either “duration of status” if the student is an academic student or the beginning and end dates of the course if the student is a vocational student. If the student acquires student status through the I-539 process, the adjudicator fills in the length of stay on the I-20.

Normally, foreign students with student visas are permitted to leave the country and re-enter provided that they present the inspector with the student copy of the I-20 and it has been signed by an authorized school representative. Foreign students who have acquired student status through the I-539 process retain that status only while in the United States. A change of status is not a visa. Accordingly, if foreign students who have acquired student status through the I-539 process leave the United States and want to re-enter to continue their course of study, they must obtain a student visa at a consulate in their country of residence to re-enter.

## **CHAPTER THREE**

### **ATTA’S AND ALSHEHHI’S ENTRIES INTO THE UNITED STATES**

#### **I. Introduction**

This chapter discusses Atta’s and Alshehhi’s entries into the United States, the decisions made by INS inspectors who handled their entries, and the INS policies that relate to the actions taken by the inspectors with respect to these entries. Atta and Alshehhi each entered the United States three times. Each time, they presented a valid passport and an unexpired B-1/B-2 visitor visa good for multiple entries.

In this chapter, we discuss Atta’s entries first, and then turn to Alshehhi’s entries. On the first and third entries, Atta was admitted through the primary inspection process. On the second entry, he was referred to secondary where he was more closely examined before being admitted. Similarly, Alshehhi was also admitted through the primary inspection process on his first and third entries and was admitted on his second entry after being referred for secondary inspection. Before describing the INS’s handling of these entries and our analysis of the INS’s actions, we provide background information on the INS inspection process that aliens such as Atta and Alshehhi face when presenting themselves for admission to the United States at ports of entry (POEs). At the end of the chapter, we provide our conclusions concerning the admissions of Atta and Alshehhi.

#### **II. The Inspection Process**

Immigration Inspectors are INS officers who work at airport, seaport, and land border POEs inspecting the documentation of persons as they attempt to enter the United States. At major airports, inspectors work shifts and are supervised by shift supervisors who report to an assistant port director or a watch commander. The assistant port directors or watch commanders report to a Deputy Port Director, who in turn reports to the Port Director.<sup>14</sup>

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<sup>14</sup> The Port Director reports to the Assistant District Director for Inspections, whose office is usually located in the district office of the district that covers the geographic

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## **A. The primary inspection process**

When aliens disembark from an airplane, they initially go through the primary inspection process. The primary inspection area is staffed by inspectors who ensure that the I-94 form (Arrival/Departure Record)<sup>15</sup> is complete, legible, and contains current information; briefly interview aliens to determine the purpose of their visit and the proposed length of stay; and check documents presented to determine their authenticity as well as expiration dates. The inspector looks at the I-94, visa, and passport, as well as any other documents that should be presented (such as an I-20), in order to determine if these documents are valid, authentic, and complete. The inspector may also review the passport for the last exits and entries to the United States to see if the aliens overstayed their previous authorized admissions. To admit the alien, the inspector must be convinced that the alien's purpose for entering the country matches the purpose for the type of visa contained in the passport.

If the passport contains a machine-readable visa or encoding on a passport's biographical page, the inspector swipes the passport through an automated reader.<sup>16</sup> This initiates a number of automated checks in the Interagency Border Information System (IBIS), which contains "lookout" databases maintained by the U.S. Customs Service; the State Department; the Bureau of Alcohol, Tobacco and Firearms; the Drug Enforcement Administration; the Royal Canadian Mounted Police; and other law enforcement agencies.<sup>17</sup> It also includes warrants and arrests from the FBI's

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location of the airport. The Assistant District Director reports to the Deputy District Director, who reports to the District Director.

<sup>15</sup> The I-94 is a two-part, two-sided perforated form. The top part of the form is used to record an alien's arrival information, and the bottom part of the form is used to record an alien's departure from the country. The alien records certain identifying information on both parts of the form. Each I-94 form contains a unique admission number printed on both portions that the INS uses to record and match the arrival and departure records of nonimmigrants. A blank I-94 is included in the Appendix at page A-1.

<sup>16</sup> If the visa or passport is not encoded for machine reading, the inspector should enter the biographical data manually into the system.

<sup>17</sup> In some instances, the automated checks against the information in IBIS occur before the passengers arrive in the United States. Through the Advance Passenger Information System (APIS), certain identifying information about airline passengers is collected from

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National Crime Information Center database (NCIC) and lookouts posted in the INS's National Automated Immigration Lookout System (NAILS).

If the computer check does not indicate a "hit" and the inspector does not determine that there is any other reason to refer the alien for secondary inspection, the inspector places an admission stamp on the top and bottom of the I-94 and the passport. The admission stamp includes the 3-digit port code, the inspector's assigned number, the current date, the classification of the visa, and the date until which the alien is admitted. The inspector also indicates in the computer system that the person has been "confirmed" or admitted via the primary inspection process.

The top portion of the I-94 (the arrival I-94) is retained by the inspector.<sup>18</sup> The bottom portion (the departure I-94) is returned to the passenger. The nonimmigrant must retain the departure I-94 at all times while in the United States. Prior to departing the United States, the passenger presents the departure I-94 at check-in or at the gate, depending on the airline's policy.<sup>19</sup>

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airlines before the passengers arrive in the United States. The information in APIS is then checked against the IBIS databases. These checks are completed before the passengers land in the United States. If a hit or a lookout is found, this information is stored in IBIS. When the inspector swipes the passport, the hit or lookout is presented automatically on the primary inspector's screen.

<sup>18</sup> The arrival I-94s are collected and mailed from the POE to an INS contractor for data entry. The alien's identifying information, including the admission number and the date of arrival, is eventually uploaded into the Nonimmigrant Information System (NIIS), the INS's primary database for tracking the entries and exits of aliens in the United States.

<sup>19</sup> The airlines collect the departure I-94 forms and send them to INS staff at the airport. The INS sends the departure I-94s to a contractor for data entry, and the recorded information is eventually uploaded to NIIS. Before September 11, 2001, I-94 forms were mailed via the United States Postal Service to the contractor. Since September 11, 2001, these forms have been sent by express courier within two days for entry by the contractor. The OIG concluded in a previous review that the INS did not have an effective system in place for obtaining departure I-94s from airlines and that the INS should take immediate action to improve the collection of these forms. See "[INS] Monitoring of Nonimmigrant Overstays," Report Number I-97-08, September 1997. The OIG recently completed a follow-up to this review and concluded that the INS still has not taken effective action to improve the collection of I-94s, particularly departure records; the INS does not actively monitor airline compliance with the requirement to provide correct and complete departure

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If the primary inspector determines that the alien is subject to a “hit” in the computer databases or does not have a valid passport or visa, the primary inspector should refer the person to “secondary inspection” for further interview and review by a secondary inspector. The primary inspector does not have the authority to deny the alien’s entry. Rather, the primary inspector’s job is to process people as quickly as possible and to refer them to secondary inspection if there is any concern about their admissibility. Primary inspectors are expected to spend no more than 45 to 60 seconds on average with each passenger.<sup>20</sup>

## **B. The secondary inspection process**

When referring the passenger to secondary inspection,<sup>21</sup> the primary inspector enters comments into the computer system indicating that a referral to secondary is being made and the reason for the referral. The alien is then taken to or directed to the secondary inspection area, which is usually adjacent to where the primary inspection occurred.

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I-94s; and the INS has not yet implemented regulations to fine airlines that fail to collect the departure I-94s. See “Follow-up Report on INS Efforts to Improve the Control of Nonimmigrant Overstays,” Report Number I-2002-006, April 2002.

<sup>20</sup> Until recently, the INS was required by law to admit international passengers within 45 minutes of their arrival at the inspection process. 8 USC § 1356(g). The INS’s Inspector’s Field Manual states that in order to comply with this requirement, the INS has established inspector-to-passenger ratios as a guide to help ensure that waiting time for arriving passengers does not exceed 45 minutes. The Inspector’s Field Manual states, “The normal staffing levels are: one inspector per 45 passengers on flights which are all aliens; one inspector per 100 passengers on flights which are all U.S. citizens and returning residents; and one inspector per 60 passengers on mixed flights.” See Inspector’s Field Manual § 22.1. The Enhanced Border Security and Visa Entry Reform Act of 2001 (H.R. 3525), which was approved by Congress and was recently signed by the President, repeals this section of the Immigration and Nationality Act.

<sup>21</sup> Even without a hit in the computer databases, the primary inspector’s job is to determine if the alien has a valid passport, the proper visa, and that his or her purpose for entering the country matches the purposes allowed under the visa classification. According to managers and line inspectors we interviewed, the primary inspector needs only a suspicion of inadmissibility to send a passenger to secondary inspection.

At major POEs, the secondary inspection area is typically staffed by one or two senior immigration inspectors, a supervisory inspector, and several experienced inspectors. The secondary inspector re-interviews the alien, reviews his or her documentation, and runs additional computer checks. The secondary inspector has access not only to IBIS and other law enforcement databases but also to several additional INS databases, including the INS's Central Index System (which shows whether the INS has an alien file (A-file) on the person), NIIS, STSC,<sup>22</sup> and CLAIMS.<sup>23</sup>

If the secondary inspector admits the passenger, the admission need not be approved by a supervisor. However, more complex cases requiring application and interpretation of a legal provision are normally presented to a supervisor for concurrence and final decision. The secondary inspector should note in the computer system comments addressing the referral by the primary inspector and the reasons the person is being admitted.

The secondary inspector may determine that the person should not be admitted and that "adverse action" is warranted. Adverse action generally means removal or exclusion based on a violation of the INA or other federal statutes.<sup>24</sup> The secondary inspector must get approval from a supervisor prior to taking adverse action.

### **III. Atta's Entries into the United States**

Mohamed Mohamed Elamir Atta, born on September 1, 1968, was a citizen of Egypt. Atta held an Egyptian passport, which was valid until

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<sup>22</sup> STSC is the Student and Schools System, an INS database that records information on the schools authorized to accept foreign students and information about nonimmigrants with student visas or student status. This database is discussed more fully in Chapter Six of this report.

<sup>23</sup> CLAIMS is the Computer Linked Application Information Management System that is used primarily to record the INS's adjudications of applications for benefits. CLAIMS is discussed more fully in Chapter Four of this report.

<sup>24</sup> If the secondary inspector develops reasonable suspicion that the alien has violated the INA or other federal statutes, the secondary inspector can detain the alien, search the alien's personal items without a warrant, place the alien under oath, and take a statement. Adverse action also may include temporary detention of the individual pending further inquiries or preparation of a criminal action.

May 7, 2007. On May 18, 2000, Atta was issued a B-1/B-2 visa at the United States consulate in Berlin, Germany. The multiple-entry visa was valid for five years. Atta used this passport and visa on his three entries to the United States, which we describe in turn.

We show a timeline of the INS's contacts with Atta on the next page.

#### **A. Atta's first entry – June 3, 2000, Newark, New Jersey**

According to INS records, Atta first entered the United States on June 3, 2000, at Newark International Airport in New Jersey, after flying from Prague International Airport in the Czech Republic. The OIG confirmed that a "hit" or a "lookout" did not appear on the IBIS screen when the inspector swiped Atta's passport. Atta was admitted by the primary INS inspector without being referred to secondary. Atta received a B-2 admission that allowed him to stay in the United States for six months until December 2, 2000.

The primary INS inspector who admitted Atta had been employed with the INS as an inspector since April 1998. He told the OIG that he did not recall the inspection of Atta.

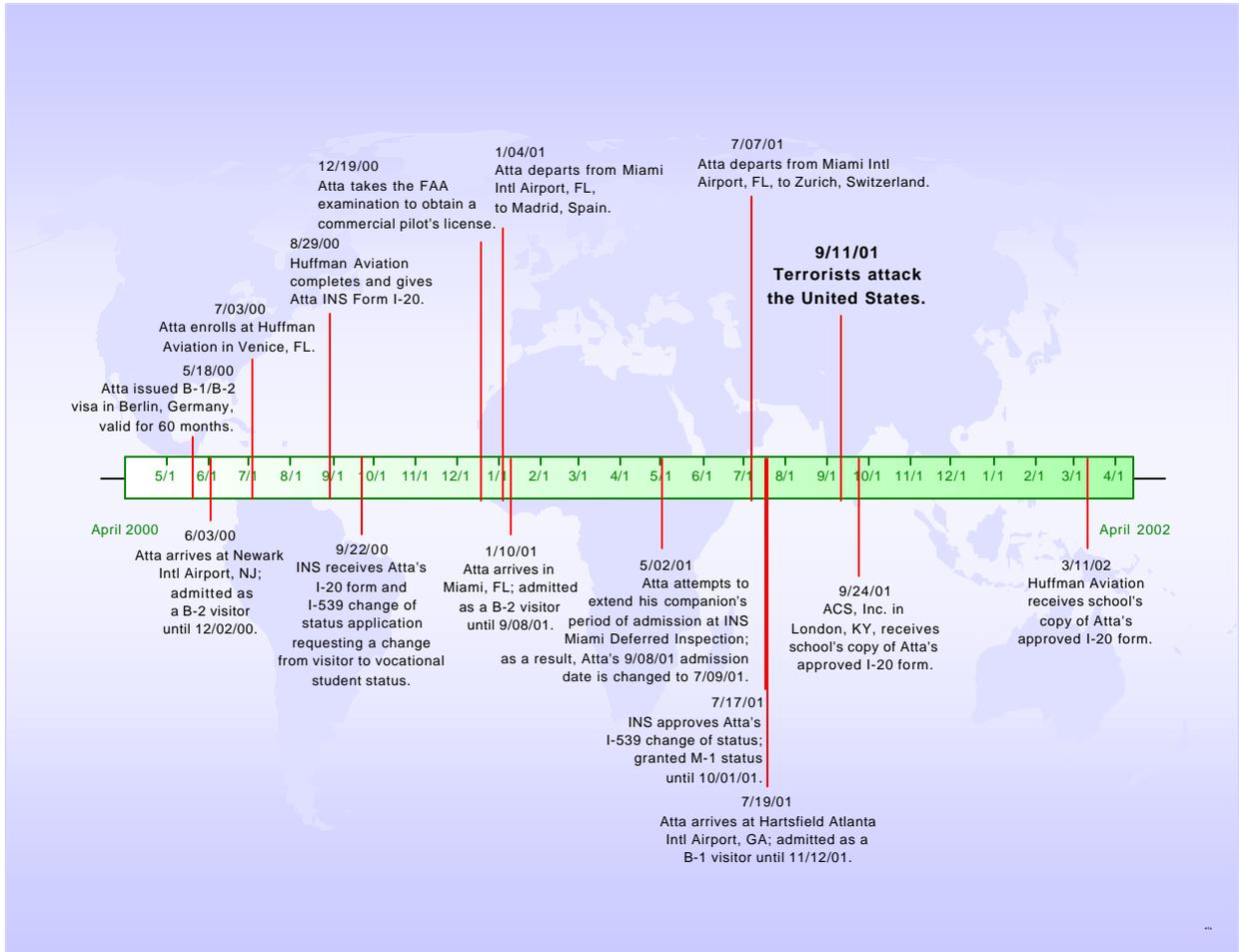
Our review of the evidence available to the inspector does not reveal any basis for concluding that his admission of Atta was contrary to INS policies and practices. Atta's passport and visa appear to have been valid, and there was no information available to the inspector through lookout checks that would have suggested that Atta should be referred to secondary inspection.

#### **B. Atta's second entry – January 10, 2001, Miami, Florida**

As we discuss in more detail in the next chapter, in August 2000 Atta (and Alshehhi) enrolled in a professional pilot course at Huffman Aviation International, a flight training school in Venice, Florida. He submitted an application to the INS (INS form I-539) requesting that his status as a visitor to the United States be changed to that of a student. The INS received his change of status form on September 19, 2000, but did not adjudicate it until July 2001. Atta finished his flight training at Huffman Aviation on December 19, 2000.

##### **1. Processing Atta at the POE**

On January 4, 2001, Atta left the United States from Miami International Airport for Madrid, Spain. Six days later, on January 10, 2001, he re-entered the United States at Miami Airport from Madrid.



The OIG confirmed that a “hit” or a “lookout” did not appear on the IBIS screen when the primary inspector swiped Atta’s passport. After being interviewed by the primary inspector, however, Atta was sent to secondary. After an interview at secondary inspection, he was admitted as a B-2 visitor until September 8, 2001.

The primary inspector who referred Atta to secondary for further inspection wrote in his electronic referral message, “PAX [passenger] turned in [an I-20 form] but has had a responce [sic], meanwhile he’s attending flight training school, already was in school for 5/6 months, please verify.” After reviewing this referral report with the OIG, the primary inspector stated that he thought the referral should have read “has not had a response [to his change of status application].”

The primary inspector did not recall the specifics of his inspection of Atta. Based upon his review of the referral report during his interview with the OIG, he stated that he must have concluded that because Atta was in flight school, he needed an M-1 (vocational student) visa. We asked the primary inspector how he would have learned that Atta had applied for student status with the INS. In his initial interview with the OIG in November 2001, the inspector told the OIG that he thought that Atta had presented an I-20, but in subsequent OIG interviews conducted in March 2002, the inspector told the OIG that he could not recall if Atta had an I-20 with him. Because the primary inspector does not have access to any database with this information, we believe that Atta must have told the inspector that he was attending school and had applied for a change of status.

The secondary inspector who interviewed Atta had been an inspector for approximately 10 years. The secondary inspector told the OIG he did not remember interviewing Atta. He said that he believed he would have followed his normal routine, which included checking several databases, including NCIC, CLAIMS, and STSC, to determine Atta’s admissibility. The secondary inspector’s notes recorded in the referral report stated the following: “SUBJ applied for M-1. I.S. Adjusted status. No overstay /No removal grounds found.”

Based upon INS computer records and these notes, it appears that the secondary inspector accessed CLAIMS and determined that Atta had applied to

change his status to an M-1 classification. According to the secondary inspector, “I.S.” means “in status,” which indicates that the secondary inspector concluded that Atta had not overstayed.<sup>25</sup> In addition, the secondary inspector told the OIG that because he indicated “adjusted status” in the referral report, he likely believed that Atta’s change of status application had been approved. We do not know how the secondary inspector could have come to that conclusion because the request had not been approved at that time and INS databases would not have reflected the approval until many months later.

The secondary inspector told the OIG that he likely admitted Atta because he believed Atta was a legitimate student, had no criminal record, and had not been an overstay on his last visit. The secondary inspector explained that he must have concluded from all of the circumstances that, even though Atta would be attending school while in the country, Atta’s primary purpose was that of pleasure and that Atta therefore fit within the B-2 category. He said that even if he had believed that Atta had only filed for a change of status but had not yet been approved, he would have likely concluded that Atta was a legitimate student who was also entitled to be admitted as a B-2 visitor.

The secondary inspector added that even if Atta had told him that his primary purpose for coming into the United States on this occasion was to go to school full-time (in other words, that his purpose did not match the purposes allowed under the B-2 category), Atta would not likely have been denied entry for failing to have a student visa. He said that under these circumstances – that Atta intended to enter as a full-time student, had a B-1/B-2 visa, and evidenced no other basis for exclusion – he would have presented the issue to his supervisors. According to the secondary inspector, his supervisors would not have supported a recommendation to deny Atta entry since the Miami airport’s

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<sup>25</sup> Even though Atta left the United States a month after his prior admission had expired, he did not overstay his prior admission. Because Atta had filed an I-539 on September 19, 2000, requesting to change his status from a visitor to a student, he was authorized to stay in the United States while his application was pending. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 provided for the automatic voidance of nonimmigrant visas in cases of overstays. But Section 212 of the INA provided that a person who has timely filed a request for a change of status is not considered “unlawfully present” and is in an authorized period of stay. 8 USC § 1182(a)(9)(B). In Section III B 3 of this chapter we discuss the effect of a nonimmigrant’s departure from the United States while his or her I-539 application is pending.

practice was to use a visa waiver process to admit aliens who appeared to be legitimate students acting in good faith who did not possess the proper documentation. The secondary inspector added that supervisors discouraged preparing a case for adverse action in cases in which supervisors were certain to grant a visa waiver.

According to the secondary inspector and numerous inspections supervisors, before September 11 foreign students typically were not scrutinized closely because they were viewed as beneficial to the nation's schools and also were not viewed as a concern for illegally immigrating or working in the United States. Several INS inspectors told the OIG that the prevailing INS practice at that time was that students would not have been excluded for failing to have the proper documentation if they did not appear to have a criminal record or prior immigration violations. Rather, students who appeared to be legitimate students acting in good faith would be admitted through the visa waiver process. The secondary inspector who admitted Atta told the OIG that he did not feel compelled to admit students under an improper visa category. He said that it was his practice to determine, based on the circumstances of the particular student, whether the student could legitimately be admitted under the visa classification in his or her passport, which in this case was a B-1 or B-2 visitor.

## **2. OIG analysis**

From the available record, it appears that the primary inspector properly referred Atta in this encounter to the secondary inspection process since the primary inspector had learned from Atta that he intended to be a student, and therefore the inspector had concluded that further review was necessary to determine whether Atta should have had a student visa.

Atta's eligibility for entry by the secondary inspector depended on what Atta said was his purpose for entering the country. The secondary inspector explained that he must have concluded from all of the circumstances that, even though Atta would be attending school while in the country, Atta's primary purpose was that of pleasure and that Atta fit within the B-2 category. The secondary inspector correctly observed that a student can be admitted under the B-2 category if the educational purposes are "incidental" to the pleasure purposes. Therefore, if the inspector believed that Atta was not intending to attend school full-time (that is taking less than 18 hours of class time or less

than 22 hours of flying time per week), admitting Atta as a B-2 visitor would have been appropriate.

The fact that the secondary inspector was aware that Atta had filed for a change of status, however, raises the question of whether the inspector incorrectly considered Atta's educational purpose as only being "incidental" to a pleasure purpose. Under immigration regulations, an alien cannot receive an M-1 visa or a change of status to an M-1 unless the alien intends to attend school on a full-time basis. Accordingly, the fact that Atta previously had requested a change of status to M-1 was at least an indicator that his purpose might not match the purpose for the B-2 visa thereby necessitating further inquiry by the secondary inspector. Because the secondary inspector does not recall the details of his conversation with Atta and because the written record is limited, we cannot reach a definitive conclusion whether the secondary inspector correctly or incorrectly assessed Atta's purpose based on the information available to him.

However, even if the secondary inspector had concluded that Atta intended to attend school on a full-time basis and therefore needed a student visa rather than the visitor visa, Atta likely would have been admitted by the secondary inspector's supervisors through the waiver process even though Atta was lacking the appropriate visa.<sup>26</sup> The majority of INS inspectors and managers who we interviewed at the Miami POE told the OIG that even if Atta should have had a student visa, they likely would have admitted him through the waiver process.

We therefore examined the circumstances under which the INS grants waivers. The waiver procedure allows aliens into the country even if they do not possess the proper paperwork. Section 212(d)(4) of the INA and the accompanying regulations provide that aliens may be admitted in the discretion of the INS if the aliens demonstrate that they cannot present the required documents because of an "unforeseen emergency." See 8 USC §1182(d)(4)

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<sup>26</sup> The waiver process includes filling out INS form I-193 and paying the prescribed fee, which at the time was \$170.00 and has since been raised to \$195.00. Secondary inspectors can initiate the waiver process but only with advance approval from a supervisor. If a secondary inspector presents a case to his or her supervisor recommending adverse action, and the supervisor believes that a visa waiver is appropriate, the supervisor can initiate the waiver process.

and 8 CFR § 212.1(g). The phrase “unforeseen emergency” is not further defined in the statute or the regulations. The phrase “unforeseen emergency” is described in the Inspector’s Field Manual as:

- An alien arriving for a medical emergency.
- An alien accompanying or following to join a person arriving for a medical emergency.
- An alien whose passport or visa was lost or stolen within 48 hours of departing the last port of embarkation for the United States.

INS officials from both the Miami and JFK POEs<sup>27</sup> agreed that, according to INA § 212(d)(4), discretionary waivers for aliens are based on “unforeseen emergencies.”<sup>28</sup> These officials acknowledged, however, that Atta’s situation would not have constituted an unforeseen emergency within the restrictive definition of that term. The training officer at JFK stated that over many years, INS inspectors have stretched the regulations “to the limit.”

We found that neither port had any written policy that discussed scenarios that might constitute “unforeseen emergencies” that should result in a waiver or which discussed the limits on such waivers. INS personnel at both ports stated that, before September 11, 2001, their supervisors exercised significant discretion in granting waivers in a wide variety of circumstances. They said that waivers were granted when it appeared “equitable” to admit aliens who were not attempting to engage in fraud and who had made a good-faith effort to comply with the INS regulations. Some officials stated that their primary concerns were whether the alien had a criminal history, a history of overstays, or appeared to be attempting to commit fraud or to immigrate without an immigrant visa. They said it also helped the alien’s case for a

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<sup>27</sup> Because Alshehhi entered through secondary inspection at JFK Airport, we discussed the issue of waiver with inspectors and supervisors there as well.

<sup>28</sup> One INS official in Miami incorrectly told the OIG that waivers also could be based on the Attorney General’s discretion under INA § 212(d)(3)(B). This section provides for a limited waiver that applies only to individuals who are inadmissible on grounds related to criminal records, terrorist activities, health issues, security and related grounds, controlled substance trafficking, membership in a totalitarian party, and other related issues. Further, this section contemplates approval of the waiver by a consular officer overseas, pursuant to INS form I-192.

waiver if, despite missing documents, the alien also had attempted to comply with legal requirements in other respects (such as by filing an application for extension of stay or for a change in status).

The New York Area Port Director told the OIG that there were a number of options for dealing with alien students who were pursuing education, had financial resources, and had no negative criminal or immigration history. These options included granting a waiver, granting a 30-day deferral for the student to obtain a new I-20 if the defect involved a missing I-20,<sup>29</sup> or determining that the student fit within the broad scope of the B-1/B-2 classifications. He indicated that the last option would be to refuse entry and send the student home. Senior inspections officials in the Miami POE agreed that prior to September 11, 2001, the prevailing philosophy was to “find a way” to admit students like Atta or Alshehhi.<sup>30</sup>

Accordingly, even if the secondary inspector had believed that Atta needed an M-1 visa, which he did not possess, Atta likely would have been admitted through the waiver procedure then in use at the Miami POE, even though the practice was not in accordance with INS policy.

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<sup>29</sup> Foreign students with a student visa must present not only their student visa but also their copy of the I-20 form in order to re-enter the country after a temporary absence. The second page of the I-20 form must be endorsed by an authorized school representative. If a nonimmigrant is in possession of the student visa but not the I-20, an inspector is permitted to admit the student for 30 days after completing INS form I-515. The student is required to obtain the necessary I-20 form or endorsement on the I-20, and to submit within the 30-day period the I-515, I-20, and I-94 to the INS office having jurisdiction over the school he or she plans to attend. Since Atta did not have a completed I-20 (his was awaiting processing), this procedure would not have been applicable to him.

<sup>30</sup> The New York Port Director told us that the practice of regularly granting waivers for aliens who forgot visas and even passports changed drastically after September 11, 2001. Former Executive Associate Commissioner for Field Operations Michael Pearson issued a memorandum to all ports on November 28, 2001, setting forth a new policy that severely restricted the granting of waivers. In the Appendix at p. A-2 we show a chart reflecting the decline in waivers at the JFK POEs after September 11.

### **3. Effect of departure while change of status application is pending**

We also investigated whether Atta's (and Alshehhi's) departures from the United States on more than one occasion while their I-539 applications were pending should have had any effect on their ability to re-enter the country. In the next chapter of the report, we discuss whether their departures should have had an effect on the adjudication of their I-539 applications.

INS personnel consistently reported to the OIG that aliens abandon their I-539 application if they leave the country while the application is pending. In addition, the OIG obtained a June 18, 2001, memorandum from Thomas Cook, Acting Assistant Commissioner for Adjudications, addressed to all Service Center Directors, District Directors, and Officers in Charge stating:

Service officers are reminded an alien on whose behalf a change of nonimmigrant status has been filed and who travels outside the United States before the request is adjudicated is considered to have abandoned the request for a change of nonimmigrant status. This has been, and remains, the Service's long-standing policy. [<sup>31</sup>]

We sought to determine how this abandonment policy would affect the alien's re-entry into the United States. We found that the fact that the alien previously applied for a change of status and then abandoned that application by leaving the country does not automatically affect the alien's re-entry. According to representatives from FLETC (the training academy responsible for training immigration inspectors), the inspector's job is to determine the alien's intent at the time of entry, and this inspection is not necessarily affected by the fact that the alien previously requested a change of status and then abandoned that request. Inspectors and managers at the Miami and JFK POEs

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<sup>31</sup> Beyond the Cook memorandum, we found no written record of this policy. The INA and immigration regulations do not address the effect of an alien's departure from the United States on the alien's I-539 application for a change of status or the alien's re-entry into the United States when that application is still pending at the time of the departure or re-entry. No one we interviewed could point to this policy in writing other than the Cook memorandum. The INS's Operations Instructions and the Inspector's Field Manual do not address this topic, and we were told by representatives of the Federal Law Enforcement Training Center (FLETC) that this policy was not in any training manuals used at FLETC.

also stated that the alien's purpose at the time of entry was the determining factor. Inspection personnel indicated that if an alien stated that he or she was returning for the purpose of attending school full-time, then the alien would need either an F-1 or M-1 visa regardless of the status of the I-539.<sup>32</sup> But they also consistently indicated that the fact that an alien has previously filed a request to change his or her status to that of a student does not necessarily require the alien at the time of the next entry to have an F-1 or M-1 visa. If the alien no longer intended to pursue a "full course of study," the alien could be admitted on other grounds.

We explored the abandoned I-539 issue with respect to Atta's second entry, since the inspectors became aware that Atta had previously filed for a change of status. The secondary inspector told the OIG that he did not believe that Atta's I-539 application would have been abandoned by his departure from the country. Although this was an incorrect statement of INS policy, the inspector also stated that even if the I-539 petition had been abandoned, the fact that Atta had filed the I-539 application was still evidence that he was attempting to be a legitimate student, and his analysis and approval of Atta's admission would have remained the same. The other inspection personnel we interviewed also said that an abandoned I-539 application would not have changed their analysis that Atta was a legitimate student who would have received a waiver.

Although Atta's and Alshehhi's abandonment of their I-539 applications would not have formed the sole basis for excluding them at the time of re-entry into the country, we believe their cases also illustrate the fact that INS inspectors lack important information when assessing an alien's eligibility for admission into the United States. Primary inspectors are not made aware through automated checks whether an alien has a change of status application pending, as Atta and Alshehhi did when they each entered the country twice in 2001. If the primary inspectors had known this, they would have had reason to question whether Atta and Alshehhi in fact intended to continue to be students,

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<sup>32</sup> An alien must have an appropriate visa (or a waiver) at the time of entry. An application for a change of status is not a visa. Indeed, even an approved I-539 change of status is not a visa. Therefore, an alien who has never filed for a change of status, an alien who has filed an I-539 but abandoned the petition by departing, and an alien who has been granted a change of status are essentially the same for purposes of re-entry.

had already completed their schooling and were returning for some other purpose, or were entering as visitors as indicated by their B-1/B-2 visas.

INS inspectors are also missing another piece of important information concerning students – whether they are, in fact, still going to school or have terminated their studies. The evidence shows that Atta represented to the primary inspector on this occasion that he had been in school for five or six months, and we found that the secondary inspector likely discussed Atta’s attendance at Huffman Aviation once the secondary inspector was aware of Atta’s I-539 application. But neither inspector was aware that Atta had in fact completed his schooling the month before in December, since the INS does not collect this information about foreign students.<sup>33</sup>

#### **4. Atta’s length of admission**

According to INS records in NIIS, on January 10, 2001, the secondary inspector admitted Atta as a B-2 visitor for 8 months, until September 8, 2001, rather than for the 6-month period regularly granted to B-2 visitors. It is not clear why Atta was admitted for this time period.<sup>34</sup>

The 8-month B-2 admission was outside of the normal admission period according to officials at the Miami and JFK POEs and at FLETC. We received contradictory information, however, regarding whether this was an error by the secondary inspector. Two supervisors told us that Atta should not have been

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<sup>33</sup> We discuss this issue and other problems in the INS’s foreign student program in more detail in Chapter Six of this report.

<sup>34</sup> Atta’s departure I-94, which we obtained from the contractor, shows a stamp authorizing admission until February 9, 2001. That date is crossed out and what appears to be another date is handwritten underneath the stamped date. The handwritten date is difficult to read, however, and could be interpreted as authorizing Atta’s entry until September 2001 or July 2001. We believe that the likely scenario is that the primary inspector initially authorized Atta to stay until February but then decided to send Atta to secondary. The secondary inspector then handwrote the actual admission date after interviewing Atta. Because the INS computer system reflects that Atta was authorized to stay until September, it appears that the handwritten date was interpreted to indicate a September date. The secondary inspector was unable to identify the handwriting, tell the date that was written on the form or recall other details to assist us in interpreting the handwriting. In any case, Atta’s admission date was subsequently changed to July 2001 (for reasons that we discuss below).

granted the extra two months and that the secondary inspector should have written on the I-94 why the extra time was being granted. Some INS officials said that supervisory approval was required to allow more than the 6-month admission. Other INS officials indicated, however, that the decision was within the inspector's discretion.

In any case, Atta's entry period was later changed to six months. On May 2, 2001, Atta went to the Miami District Office to inquire about extending the date of admission for a companion who also had entered the United States on a B-2 visa on January 10, 2001, but had been given only a 6-month admission instead of the 8-month admission given to Atta. Once at the District Office, Atta spoke to an immigration inspector who normally was assigned to work at the Miami airport, but who was working a 1-day detail at the District Office.

According to this inspector, Atta and his companion requested that Atta's friend's 6-month admission be extended to 8 months since Atta had received an 8-month admission. Atta showed the inspector his and his friend's I-94 and passport. The inspector told the OIG that she determined that since Atta was admitted to the United States with a B-2 visa, he should have been permitted to stay a maximum of six months. The inspector's supervisor at the District Office concurred and stated that if there was a good reason for an 8-month visitor visa, it should have been noted on the I-94. Therefore, to correct the mistaken 8-month admission for Atta, the inspector made a notation on the back of Atta's I-94 that an error had been made, sent this I-94 to the contractor who data enters information from the I-94, issued Atta a new I-94 with an admission date for six months until July 9, 2001, and noted in the "comments" section that the previous I-94 had been issued in error.<sup>35</sup>

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<sup>35</sup> When we reviewed INS records, they appeared to reflect two entries by Atta into the United States on January 10, 2001, which initially raised a question as to whether Atta had entered twice on the same day or whether a second person posing as Atta also entered on January 10, 2001. The NIIS printout for the first entry reflects that Atta entered with an admission period of January 10, 2001, to September 8, 2001 (admission number 68653985708). The second record reflects a second entry on January 10, 2001, with an admission period from January 10, 2001, to July 9, 2001 (admission number 10847166009). However, this occurred because the inspector at the Miami District Office who changed Atta's admission date failed to follow the proper procedure to ensure that the previous entry would be corrected, and a new entry was created in NIIS. The inspector sent the old I-94

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### **C. Atta's third entry – July 19, 2001, Miami, Florida**

Atta left the United States again from Miami International Airport on July 7, 2001, headed for Zurich, Switzerland. He re-entered the United States on July 19, 2001, at Atlanta Hartsfield International Airport, using his B-1/B-2 visa. The OIG confirmed that a “hit” or a “lookout” did not appear on the IBIS screen when the primary inspector swiped Atta’s passport.<sup>36</sup> The OIG also confirmed that Atta was admitted through the primary inspection process and was not referred to secondary.

At the Atlanta airport, Atta was inspected by a primary inspector who had been employed with the INS as an inspector since 1997. This inspector told the OIG that he did not recall the inspection of Atta. Atta was admitted for four months, until November 12, 2001, as a B-1 visitor.

As noted previously, the B-1/-B-2 visa permits entry for either business (B-1) or pleasure (B-2) purposes. After the alien states his purpose for visiting, the inspector admits the alien under one of the two categories. It therefore appears that Atta stated some business purpose for visiting that fit within the B-1 category, even though his previous entries had been under the B-2 category. The inspector did not recall Atta or why he admitted Atta for a business purpose, and no INS record sheds further light on the reason for Atta’s admission under a B-1 visa.

We also sought to determine whether the fact that Atta had recently entered the United States twice for six months on each occasion should have affected the inspection process. The OIG found no INS requirement or policy,

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and the corrected I-94 to the contractor which data enters I-94s for the INS. The May 2, 2001, transaction with Atta was data entered and then uploaded to NIIS as if it were a new entry by Atta. This happened because the inspector issued a new I-94 with a new admission number on it. To prevent two entries from occurring in NIIS, the inspector should have crossed out the admission number on the new I-94, made a reference to the previous admission number and noted that it was not a new entry.

<sup>36</sup> The OIG obtained an FBI document indicating that Atta was issued a citation for a traffic violation in Fort Lauderdale, Florida, on April 26, 2001, and that a warrant for his arrest was issued on June 4, 2001, for failing to appear in court. The evidence shows, however, that this information would not have appeared on the IBIS screen of the primary inspector.

written or otherwise, that an alien be referred to secondary based solely on the fact that the alien had departed and re-entered the United States recently on several occasions. We were informed by INS officials that multiple entries is but one factor the inspector uses in determining whether the alien appears suspicious or appears to be attempting to reside or work in the United States. Our review of the information available to the inspector does not reveal any basis for concluding his admission of Atta was improper.

#### **IV. Alshehhi's Entries into the United States**

Marwan Yousef Mohamed R-Lekrab Alshehhi, born on May 9, 1978, was a citizen of the United Arab Emirates. Alshehhi held a United Arab Emirates passport, issued January 2, 2000, and valid until January 1, 2005. On January 18, 2000, Alshehhi was issued a B-1/B-2 visa at the United States Consulate in Dubai, United Arab Emirates. This multiple-entry visa was valid for 10 years, until January 17, 2010. Alshehhi used this passport and visa on each of his three entries to the United States, which we describe in turn.

We show a timeline of Alshehhi's contacts with the INS on the next page of the report.

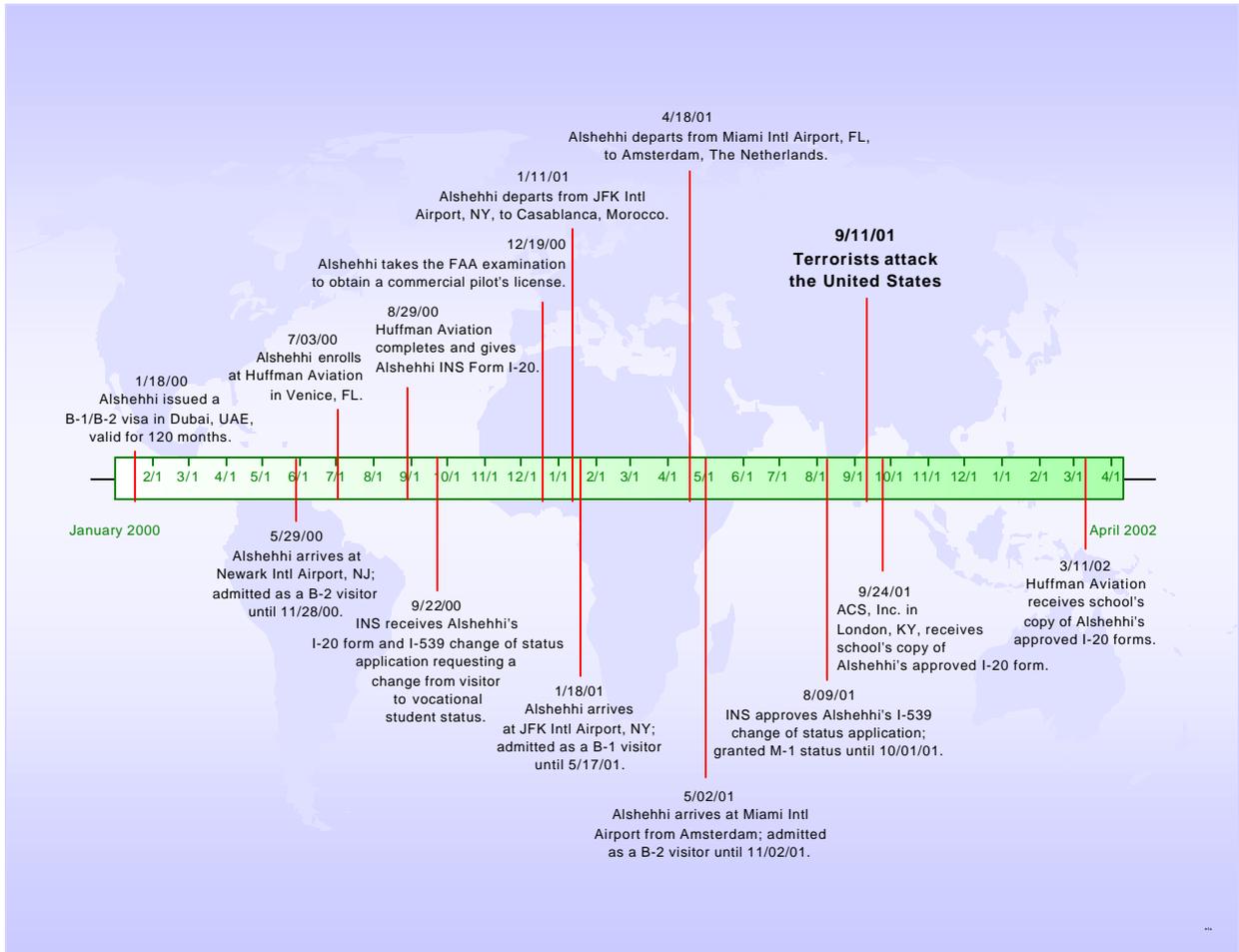
##### **A. Alshehhi's first entry – May 29, 2000, Newark, New Jersey**

According to INS records, on May 29, 2000, Alshehhi flew from Brussels, Belgium, to Newark International Airport in New Jersey. His arrival I-94 listed his country of citizenship as the United Arab Emirates and his country of residence as Germany.

The OIG confirmed that a "hit" or a "lookout" did not appear on the IBIS screen when the primary inspector swiped Alshehhi's passport. He was admitted through the primary inspection process as a B-2 visitor for six months and was not referred to secondary inspection.

The primary inspector who admitted Alshehhi had been employed with the INS as an inspector since May 1997. He told the OIG that he did not recall the inspection.

The inspector said that when encountering an alien with a B-1/B-2 visa and no prior entries recorded in his passport, he would have asked questions concerning the purpose of the trip, the anticipated length of the trip, who the alien would be visiting, where he would be staying, and the length of any previous trips to the United States (if the alien acknowledged prior visits). The



inspector said that if the alien failed to answer these questions satisfactorily or if the alien's demeanor gave him any reason for concern, he would send him to secondary for further questioning.<sup>37</sup> The inspector said that Alshehhi must have represented that he was visiting the United States primarily for pleasure, since he admitted Alshehhi under the B-2 category for six months, until November 28, 2000.

Our review of the information available to the inspector does not reveal any basis for questioning his admission of Alshehhi. His passport and visa appear to have been valid, and there was no information available to the inspector through lookout checks that would have suggested that Alshehhi should be referred to secondary inspection.

#### **B. Alshehhi's second entry – January 18, 2001, New York, New York**

Alshehhi (like Atta) enrolled in Huffman Aviation's professional pilot's program in August 2000 and filed an application with the INS for a change in status from visitor to student, which the INS received on September 19, 2000. On December 19, 2000, Alshehhi (like Atta) completed his flight training course.

On January 11, 2001, Alshehhi departed the United States from JFK Airport for Casablanca, Morocco. A week later, on January 18, 2001, Alshehhi returned to JFK Airport from Casablanca.

During this entry, Alshehhi presented the same passport and B-1/B-2 visa that he used on his first entry to the United States. Therefore, Alshehhi's passport should have indicated that he had departed the United States just seven days earlier, on January 11, 2001.

The OIG confirmed that a "hit" or a "lookout" did not appear on the IBIS screen when the primary inspector swiped Alshehhi's passport. On this entry, however, Alshehhi was sent to secondary and was admitted through the secondary inspection process as a B-1 visitor until May 17, 2001.

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<sup>37</sup> The primary inspector told the OIG that Alshehhi's country of citizenship, the United Arab Emirates, was not at the time of special interest to the INS and that, because it was not, Alshehhi did not warrant additional scrutiny.

INS computer records (the INS referral report) contain the following reason for Alshehhi's referral to secondary: "SUBJ left one week ago after entry in May (2000). Has extension and now returning for a few more months." The referral report also notes a referral code of "03 Travel History/Routine." According to INS inspectors, this 03 code refers to nonimmigrants, and "Travel History/Routine" means that the nonimmigrant has no history of overstay.<sup>38</sup>

The primary inspector who handled Alshehhi told the OIG that she recalled this entry. She said that based upon her recollection and the referral report, she referred Alshehhi to secondary because his lengthy prior stay and short absence as reflected in his passport suggested to her that Alshehhi was trying to "beat" the immigration system and was attempting to establish residence in the United States. She said that she felt that Alshehhi was probably living in the United States and had not bothered to obtain a proper visa.

The secondary inspector who interviewed Alshehhi had been an INS inspector for 23 years and had worked mostly as a secondary inspector since 1990. The secondary inspector told the OIG that he had a "vague recollection" of handling Alshehhi on January 18, 2001. He said that he thought that Alshehhi was polite during his inspection and was not confrontational in any way.

INS records show that Alshehhi was in secondary for 30 minutes. The secondary inspector estimated that he interviewed Alshehhi for a total of 10 out of the 30 minutes. The referral report reflects the following comments by the secondary inspector: "Was in US gaining flight hours to become a pilot. Admitted for four months."

The secondary inspector said that, although he had a vague recollection of Alshehhi, he did not recall the specifics of his inspection. Based on reading the referral from the primary inspector, the secondary inspector said he would have known that the primary inspector was suspicious of the length of Alshehhi's stay for pleasure on his prior visit and his immediate return to the

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<sup>38</sup> Alshehhi, like Atta, left the United States a little more than a month after his prior admission period had expired on November 28, 2000, but he did not overstay since he filed an I-539 on September 19, 2000, prior to the expiration of his admission period.

United States after a 1-week absence. The secondary inspector said that based upon his own comments on the report, he also had learned that Alshehhi had already been attending flight school to become a pilot. The secondary inspector said that at a minimum he would have checked the NCIC database for criminal history and the NIIS database to check Alshehhi's prior entries. He said that he also would have checked CLAIMS, which would have confirmed that Alshehhi had filed the I-539 change of status application.

Based on his review of the record available now, the secondary inspector pointed to a number of reasons why he did not believe Alshehhi was attempting to illegally work or live in the United States indefinitely. He noted that Alshehhi had previously been admitted to the United States under a B-2 visa and then left the United States before he had to (given that he was permitted to stay in the United States while the I-539 was pending). In addition, Alshehhi had used the same passport and visa for both visits. The secondary inspector also noted that he did not see in the record any other indications of concern, such as being late for the course, lack of English skills, lack of a plane ticket to the site for the training course, or lack of money for school. He stated that he would not have considered the fact of Alshehhi's two admissions within a short time frame as significant, since most countries now issue visas for 10 years and aliens are entitled to come and go as they wish, as long as they do not overstay. According to the secondary inspector, under the circumstances, he did not consider that Alshehhi's behavior indicated an individual who was attempting to "play the system" and to live and work in the United States.

The secondary inspector admitted Alshehhi under the business visitor (or B-1) category. The secondary inspector indicated that he likely understood that Alshehhi was coming to the United States to log flight hours to become a pilot, not to go to school full-time. He said that the INS often admits individuals under B-1 visas for the purpose of attending seminars and training, including flight training. He said, for example, that the B-1 category is commonly used to admit aliens to take computer training in order to obtain a certification.

The secondary inspector's supervisor on January 18 had been an immigration inspector for seven years and a supervisory inspector for more than four years.<sup>39</sup> This supervisor told the OIG that he agreed with the

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<sup>39</sup> The supervisor did not encounter Alshehhi on this occasion.

secondary inspector concerning the appropriateness of admitting visitors for flight training under a B-1 visa.

The supervisor stated, however, that if Alshehhi had sought a B-1 admission specifically to continue flight training school to obtain a certificate, then the B-1 was the wrong category of admission and that he should have been required to obtain a student visa. The supervisor stated that absent any evidence of prior overstays or a criminal record, the alien would likely be given an I-193 waiver and temporary M-1 status while he remained in the country. The supervisor said that he probably would have supported a waiver because of all of the things the student did “right,” including filing an I-539 and not overstaying on his previous visits. According to this supervisor, students are given the benefit of the doubt if possible. He said that the only way that they would be returned to their country would be if there were proof of malice and intent to deceive.

The secondary inspector admitted Alshehhi for four months, until May 17, 2001. The secondary inspector said that Alshehhi must have given a specific reason why he needed a 4-month stay in this country. According to the secondary inspector’s supervisor, it was the port’s policy to admit business visitors for a minimum of three months. He said that port policy allows for up to six months, at the inspector’s discretion, if the alien presents a satisfactory reason.

Based on our review of the evidence available to the inspector, we concluded that his admission of Alshehhi was not contrary to INS practices at the time.

### **C. Alshehhi’s third entry – May 2, 2001, Miami, Florida**

Alshehhi made his third and final entry to the United States on May 2, 2001, at Miami International Airport. He had left the United States from Miami on April 18, 2001, bound for Amsterdam, and he returned to Miami on May 2 from Amsterdam. He presented the same passport and visa as on the previous two entries.

The OIG confirmed no “hit” or “lookout” appeared on the IBIS screen when the primary inspector swiped Alshehhi’s passport. He was admitted through the primary inspection process as a B-2 visitor for six months, until November 2, 2001.

The primary inspector who admitted Alshehhi had been an inspector since 1997. He told the OIG that he did not recall the inspection, and INS records do not indicate anything else noteworthy about the inspection.

The inspector told the OIG that the fact that Alshehhi had made two previous visits to the United States and stayed for several months on each visit would not have made any difference in his inspection. He said that in his estimate at least 50 percent of the passengers that he sees have a travel history or pattern similar to that of Alshehhi. He said that he would not have referred Alshehhi to secondary absent some kind of suspicious behavior or potential document fraud. Our review of the information available to the inspector does not reveal any basis for concluding his admission of Alshehhi was improper.

## **V. OIG Conclusions on the INS's Admission of Atta and Alshehhi**

Atta's and Alshehhi's three admissions into the United States followed the same pattern. They each held valid passports and B-1-/B-2 visas, good for multiple entries into the United States. The immigration inspectors who admitted them during their first and third entries did so routinely, without referring them to secondary inspection. Understandably, the inspectors had no memory of their encounters with Atta and Alshehhi, given the many inspections they have conducted since then. From the evidence, however, it appears that these inspectors did not admit Atta and Alshehhi in violation of INS policies and practices in light of the information available to the inspectors at the time of these admissions. We found no indication that the inspectors were presented with or were aware of any information that would have caused them to refer Atta and Alshehhi to secondary inspection.

However, after Atta and Alshehhi both left the United States in January 2001 and separately returned a few days later, they both were referred to secondary inspection for further questioning. It appears that Atta was referred to secondary because the primary inspector believed that Atta was attending flight school and that Atta should be referred to secondary for further questioning to determine if an M-1 visa was required.

The secondary inspector stated that he believed that Atta was a legitimate student who had no criminal record or history of overstays. He said that he would have admitted Atta under the B-2 category if he concluded that Atta's school attendance was incidental to a pleasure purpose. Atta's filing of an I-539 change of status application might have indicated that he was intending to attend school on a full-time basis. Because the secondary inspector does not

recall what Atta said during the inspection and the written record is limited, we cannot determine what Atta represented about his school plans or whether the secondary inspector's decision to admit him was improper.

If the secondary inspector believed that Atta was returning to the United States to attend school on a full-time basis, the secondary inspector should have concluded that Atta needed an M-1 visa. INS personnel to whom we spoke asserted, however, that even though Atta did not have an M-1 visa, it is likely that he would have been admitted through the waiver process. They contended that because Atta had no record of prior criminal or immigration violations and had made a good-faith attempt to change his status to an M-1 classification, INS supervisors likely would have admitted him through the waiver process.

While this appears to be an accurate assessment of how the INS treated applicants like Atta at the time, the legal requirements for granting a waiver to Atta were not met. Atta did not demonstrate "an unforeseen emergency" as to why he did not have the M-1 visa, which the INS regulations require for such waivers. Yet we were told that prior to September 11, INS inspectors did not typically enforce this requirement when granting waivers, so it is likely that Atta would have been admitted regardless of what the secondary inspector concluded about his school plans.

A similar analysis applies to Alshehhi's second admission to the United States in January 2001, under the B-1 (business) visa classification. If Alshehhi stated that he intended to attend flight school full-time, he needed an M-1 visa for admission to the country or a waiver. On the other hand, if Alshehhi stated he was coming to the United State to log flight hours, he was admissible under the B-1 business visa that he received. The INS's referral report does state that Alshehhi "was in the US gaining flight hours to become a pilot." Based on our review of this evidence, we concluded that his admission of Alshehhi was not contrary to INS practices at the time. However, even if the secondary inspector had determined that Alshehhi required a student visa, it is likely that Alshehhi, like Atta, would have received a waiver to enter the United States.

The INS's prevailing mindset in dealing with foreign students at the POEs until September 11 was that students were not a concern or a significant risk worthy of special scrutiny. Consistent with this approach, INS inspectors and supervisors, who incorrectly believed that they had broad discretion to grant waivers, would admit students through the waiver process when they

appeared at POEs without the proper documentation and did not present any evidence of inadmissibility. Since September 11, the INS has issued guidance to the field restricting use of the waiver process and has also taken other steps to more closely scrutinize the admission of students to the United States. We discuss those steps in Chapter Seven of this report.

## CHAPTER FOUR

### THE INS'S DELAYED PROCESSING OF ATTA'S AND ALSHEHHI'S APPLICATIONS FOR CHANGE OF STATUS

#### I. Introduction

In this chapter of the report, the OIG addresses the first of the two questions presented by the Attorney General in his March 13, 2002, memorandum requesting our investigation:

- Why did the INS take so long to process the change of status applications, including the I-20 forms, of Atta and Alshehhi?

We begin with detailed information about the forms used in the change of status process and the circumstances that gave rise to Atta and Alshehhi filing change of status applications with the INS. Next we describe the processing of Atta's and Alshehhi's change of status applications at the Texas Service Center, as well as the processing of the I-20 – the form that was sent to the contractor and returned to Huffman Aviation in March 2002. We then analyze the reasons that the INS took several months to process the change of status applications of Atta and Alshehhi.

Because it is directly related to the issue of the processing of the I-539 applications, we also analyze whether the INS properly approved Atta's and Alshehhi's change of status applications. In addition to examining each step of the adjudication process, we examine information that should have been available to the adjudicator before the adjudication was completed but was not.

#### II. Process to Obtain Nonimmigrant Student Status

As we previously discussed, foreign students who want to study in the United States can obtain legal permission to do so in two ways. The method pursued by the majority of foreign students is through the student visa process. The State Department is responsible for issuing visas to nonimmigrants outside the United States who intend to become full-time students.<sup>40</sup> Nonimmigrants

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<sup>40</sup> During fiscal year 2001, the State Department issued 319,518 F visas to students and their dependents for the purpose of attending academic or language courses in the United States and 5,658 M visas to students and their dependents for the purpose of attending

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may also ask the INS to change their status to students after they have entered the United States through other legal means.<sup>41</sup> This method does not involve the State Department.

To change their status to student while in the United States, the applicants file INS Form I-539 (Application to Extend/Change Nonimmigrant Status),<sup>42</sup> along with the appropriate fee<sup>43</sup> and the appropriate “evidence.” (We show a blank I-539 form in the Appendix at page A-3.) 8 CFR § 248.3(b). Applicants must sign the I-539 form and submit copies of their I-94 form, a copy of their passport, and documentary evidence of financial support. 8 CFR § 214.2(f)(i)(A) – (C).

The student also must submit to the INS a completed I-20 form. The first page of the 4-page I-20 form is completed by the school and specifies the student’s name, date of birth, and citizenship; the school’s name, address, and INS school certification code; the name, length, and cost of the program for which the student has been accepted; the school’s English proficiency requirements; and information on the student’s financial resources. Page one is known as the “school copy” because it is eventually returned by the INS to the school. The second page contains a set of instructions for completing and filing the form. The third page is identical to the first page and also must be completed by the school. The last page contains signature lines, which must be signed by an approved school official if the student plans to leave the country temporarily. The last two pages constitute the “student copy,” which is returned by the INS to the student after the adjudication decision is rendered.

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vocational or other nonacademic courses. We discuss this method of obtaining a student visa more fully in Chapter Six.

<sup>41</sup> During fiscal year 2001, 28,880 aliens were approved for a change of status to student status. Of these, 27,848 adjusted their status to that of an academic or language student (F) and 1,032 adjusted their status to that of a vocational student (M).

<sup>42</sup> The I-539 form is used by nonimmigrants who want to either change their status or extend their status. The extension of status process is similar to, although not exactly the same as, the change of status process.

<sup>43</sup> In September 2000 when Atta and Alshehhi submitted their I-539 applications, the fee for filing an I-539 was \$120.00. The amount was raised to \$140.00 in February 2002. 8 CFR § 103.7(b).

(We show an I-20 form in the Appendix at page A-8.) Both the school copy and the student copy of the I-20 must be signed by the appropriate school official and by the student. 8 CFR § 214.2(f)(1)(i)(A) and § 214.2(m)(1)(i)(A).

Change of status application forms (form I-539) are processed and adjudicated at one of four INS service centers. The I-539 instructions direct the applicant to send the form to a particular service center depending upon where the applicant lives. Since Atta and Alshehhi were living in Florida, they were required to send their applications to the Texas Service Center. At the Texas Service Center, the I-539 is adjudicated by a Center Adjudications Officer (CAO) based on a review of the file. Unlike with some INS applications, no in-person interview is conducted for the adjudication of I-539s.

Once the CAO approves the change of status application, the CAO stamps both the student copy and the school copy of the I-20. The CAO also writes in the new status and the dates for which the status is being granted. If the applicant is an F-1 student, the CAO will write “duration of status” or “D/S” on the I-20s. If the applicant is an M-1 student, the CAO will fill in the dates of the course of study as stated on the I-20 plus 30 days.

Immediately following the approval, the adjudicator returns the student copy to the student through the mail. The school copy of the I-20 is mailed to Affiliated Computer Services, Inc. (ACS) in London, Kentucky, the INS contractor who data enters information from the I-20s that is eventually uploaded to an INS database.

In 2001, under its interpretation of its contract, ACS data entered information from the school’s copy of the I-20 and retained the form for 180 days. After 180 days, ACS mailed the school’s copy of the I-20 to the school.<sup>44</sup>

### **III. Huffman Aviation’s Initiation of Atta’s and Alshehhi’s Applications for Change of Status**

According to Rudi Dekkers, the Chief Executive Officer and President of Huffman Aviation International, Atta and Alshehhi first appeared at Huffman Aviation on July 1, 2000, and spoke to Huffman’s student coordinator, who

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<sup>44</sup> After March 15, 2002, the INS instituted new procedures for the processing of I-20s. We discuss those changes in Chapter Seven of this report.

provided them with information on the flight school. Atta and Alshehhi returned to Huffman Aviation on July 3, 2000, and enrolled in a professional pilot's course. Dekkers stated that at the time that Atta and Alshehhi became students, approximately 75 percent of Huffman's enrollments were foreign students.<sup>45</sup> Dekkers told the OIG that to his knowledge, Atta and Alshehhi were the only foreign students at his school who were already in the United States when they applied. He said his students normally submitted applications from overseas.

Dekkers stated that he believed Atta and Alshehhi had previously attended another aviation school, so both had some piloting experience. He said they presented their logbooks when applying at Huffman to show proof of previous flight hours. According to Dekkers, he required Atta and Alshehhi to first take private lessons with Huffman Aviation before enrolling in the professional pilot's course. He said that he did this to make sure that they were "serious" about the course. He added that he routinely required students to first take private lessons for two to three months before enrolling in a course. Dekkers stated that Atta and Alshehhi were ready to take the professional pilot's course at the end of August 2000.

Huffman Aviation is certified by the INS as a vocational school (as opposed to an academic school) authorized to accept foreign students. Dekkers told the OIG that his policy was to issue I-20s to all of his foreign students and to require them to obtain M-1 visas in order to take any of his professional courses.<sup>46</sup> At the end of August, Atta and Alshehhi requested that Huffman Aviation's student coordinator provide them with the appropriate INS forms to enable them to apply for a change of status to become M-1 students.

Atta's and Alshehhi's I-20 forms stated that the Huffman course ran from September 1, 2000, until September 1, 2001. In fact, their course work was completed by December 2000. According to Dekkers, the professional pilot's

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<sup>45</sup> Dekkers stated that currently only a small number of his students are foreign students.

<sup>46</sup> Dekkers told the OIG that he believed that it was permissible for foreign students to take private flight lessons while in the country on a B-1/B-2 visitor's visa but that he required students to obtain M-1 student visas or M-1 student status to be "on the safe side." Because Atta and Alshehhi were not taking sufficient hours to be considered full-time students, they were not in fact eligible to apply for the change of status. We discuss this issue more fully in Section VII C 2 of this chapter of this report.

course can be completed in up to one year, although some students working diligently are able to complete the course sooner. He said that the course has no required beginning and end dates, and that these dates are determined by the student's preference and progress. When the student has accrued a sufficient number of flight hours (based on Federal Aviation Administration [FAA] regulations), the student is eligible to take the pilot's license test. According to Dekkers, a course period of one year is normally listed on the I-20 to enable students to finish the course at their own pace.<sup>47</sup> The Huffman student coordinator told the OIG that Atta and Alshehhi specified that they wanted the course dates to be listed on the I-20 to run from September 1, 2000, through September 1, 2001.

According to INS records, the INS received Atta's and Alshehhi's change of status applications on September 19, 2000. While their applications were pending, Atta and Alshehhi continued taking the training course at Huffman Aviation through December 2000. On December 19, 2000, they completed the course by passing the FAA pilot's test. According to Huffman records, from July 2000 through December 2000, Atta was billed for 194.4 hours of flight instruction and 27.2 hours of pre/post flight instruction; Alshehhi was billed for 203.6 hours of flight instruction and 24.1 hours of pre/post flight instruction.

#### **IV. Processing at the Texas Service Center**

Personnel at the INS Texas Service Center (TSC) were responsible for processing and adjudicating Atta's and Alshehhi's applications for change of status. We describe the administrative and adjudication process for these applications in the sections that follow.

##### **A. INS service center organization and mission**

INS Service Centers primarily process and adjudicate applications and petitions that do not require face-to-face interviews with applicants.

Atta and Alshehhi submitted their I-539 applications for change of status to the TSC, the service center with responsibility for processing and

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<sup>47</sup> We discuss whether Huffman Aviation should be authorized by the INS to issue I-20s in Chapter Six of this report.

adjudicating applications from Florida, where both men were residing and attending flight school. The TSC was run at the time by Deputy Service Center Director Carmelo A. Ortiz. Ortiz, who became the Deputy Service Center Director in 1997, served as the Acting Director of the TSC for several months prior to the arrival of the permanent Director on September 11, 2001. In addition to the Director and Deputy Director, the TSC has several Assistant Center Directors. The positions relevant to this report are four Assistant Center Directors for “Adjudications” (who oversee adjudications of different kinds of applications) and the Assistant Center Director for the Enforcement Operations Division, which handles referrals from the adjudicators of potential benefit fraud cases.<sup>48</sup>

Many of the operations of service centers, such as the clerical functions associated with processing applications – including mail handling, data entry, and storage retrieval – are handled by a contractor. The adjudication functions, on the other hand, are handled by INS CAOs.

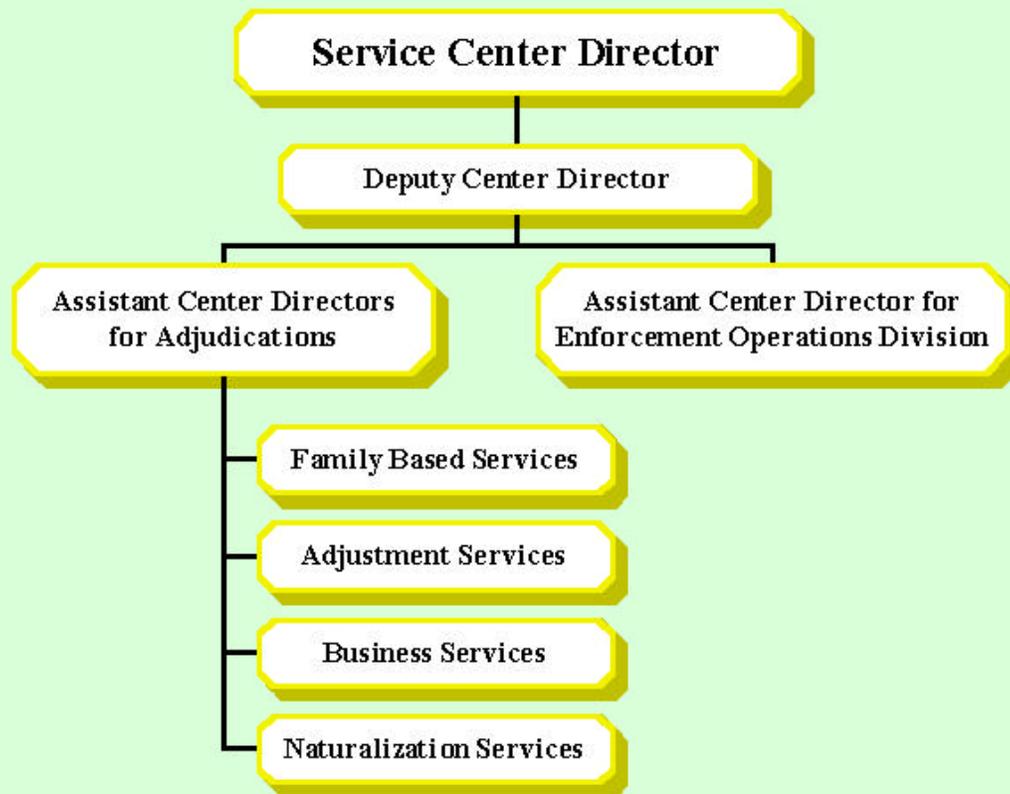
The TSC is composed of two facilities: a “headquarters” facility in Dallas, Texas, which houses the INS personnel, including the CAOs; and a warehouse in Mesquite, Texas, operated by contractor personnel who receive and process for eventual adjudication all applications sent to the TSC, including I-539s.<sup>49</sup> In 2001, the TSC employed approximately 300 INS employees (including 100 CAOs) and 430 contractor employees. In fiscal year 2001, the TSC received 919,664 applications and completed 708,344 applications.

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<sup>48</sup> An organizational chart depicting the relevant positions within the TSC is on the next page of the report.

<sup>49</sup> In September 2000, when the Atta and Alshehhi I-539s were received at the TSC, the contractor operating the Mesquite processing facility was Labat-Anderson, Inc. On July 3, 2001, the INS entered into a contract with JHM Research and Development, Inc. (JHM) to handle the clerical processing of applications at the Mesquite facility. JHM began operating the Mesquite facility on July 7, 2001. According to the JHM Deputy Site Manager, a significant number of employees hired by JMH to work at the Mesquite facility formerly worked for Labat-Anderson at the facility. The INS has a unit at the Mesquite facility, the Contract Performance Analysis Unit, which is responsible for monitoring the contractor’s performance.

# Immigration and Naturalization Service Texas Service Center as of July 2001



## **B. Processing and adjudication of I-539 applications for change of status**

When Atta and Alshehhi submitted their I-539s in September 2000, applications for change of status were processed and adjudicated at the TSC in the manner described below.<sup>50</sup> A chart depicting this process is on the next page.

### **1. Pre-adjudication processing**

Applicants for change of status are directed by the instructions on the INS forms to mail their applications to a particular post office box (depending on the type of form and the appropriate service center) and to attach the prescribed fee. Contractor personnel pick up the mail and subject it to a cursory review – a “slit and peek” – to determine the type of application and to ensure that it is accompanied by a remittance. These employees then segregate the applications by type, endorse the remittances for deposit, and forward the applications to a second group of mail room employees, known as the “set-up team.”

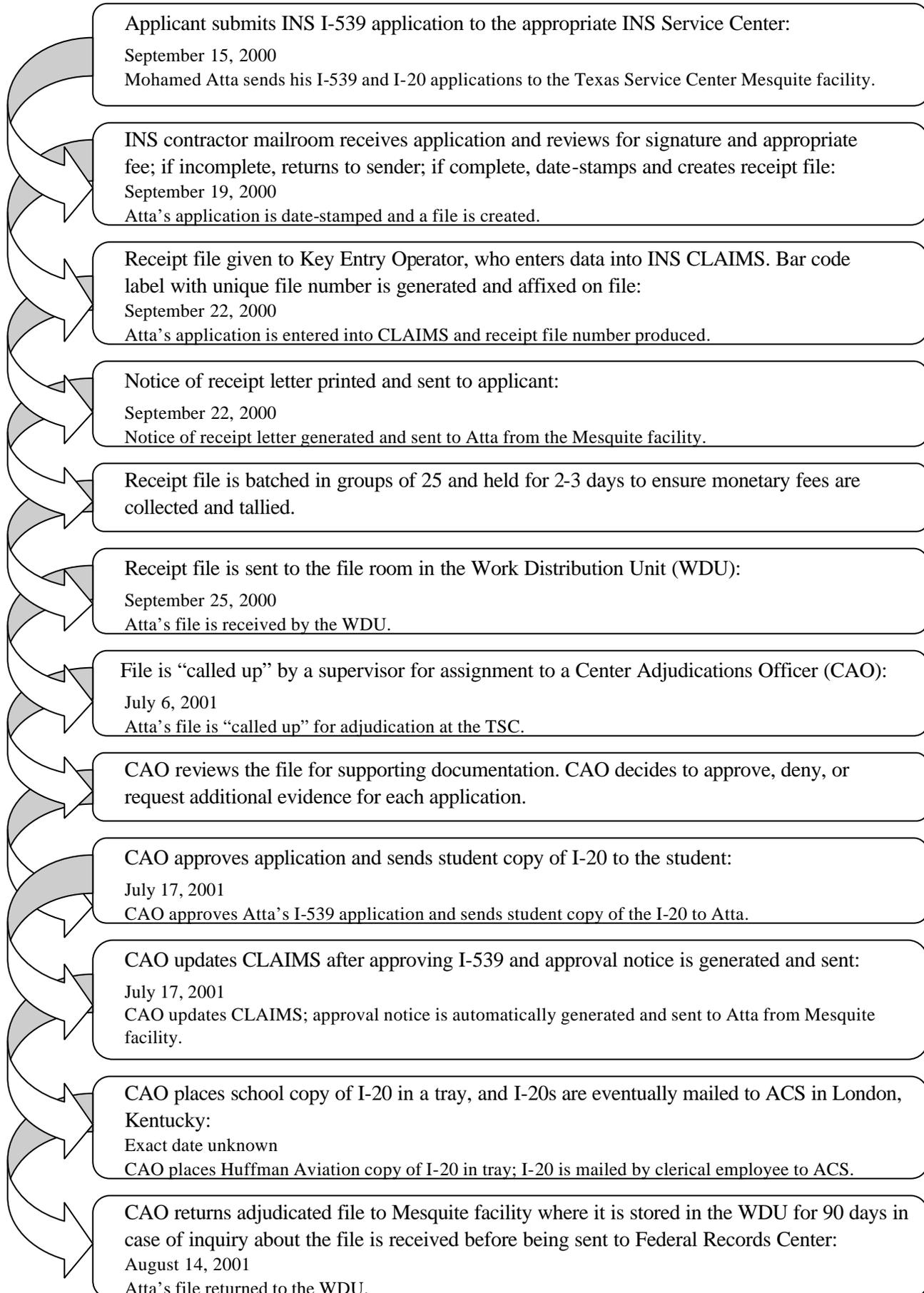
The set-up team reviews the application to ensure there are no obvious problems that would prevent further processing. The most frequent disqualifying grounds are that the TSC does not have jurisdiction to adjudicate the application; that the remittance is for the wrong amount; or that the application is not signed. If one of these problems is identified, the application is rejected and returned to the alien without further processing.

If none of these problems is present, the file set-up personnel assemble each application, remittance, and supporting documentation in a “receipt file.” The receipt files are transferred, oldest first, to a section called Data Entry, usually within one day of receipt of the application at the TSC.

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<sup>50</sup> With limited, minor exceptions, the process has not changed from September 2000 to today.

## INS I-539 Change of Status Application Process



This chart depicts the process for I-539 change of status applications processed at the Texas Service Center in 2000-2001.

Data entry personnel, called key entry operators, enter certain information from the application and the remittance directly into the INS's Computer Linked Application Information Management System (CLAIMS).<sup>51</sup> The key entry operators are responsible for separating the remittance from the application,<sup>52</sup> reviewing the file again for a limited number of grounds for rejection, such as the absence of a required signature, and manually keying in ("capturing") specified data from the application into CLAIMS.<sup>53</sup> After the requisite information is keyed into CLAIMS, the system automatically generates and prints a bar code label with a unique file number, which is affixed to the receipt file; the bar code label also records the initials of the key entry operator and the date of entry.<sup>54</sup> In addition, address labels are generated once the data entry is completed.

According to the Assistant Site Manager for Data Entry, on average a key entry operator processes an I-539 in 2-3 minutes. After the data from the application is keyed in and accepted by the system, CLAIMS automatically generates a notice on INS form I-797 to the applicant informing him or her that

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<sup>51</sup> CLAIMS is an INS mainframe computer system that has been used in the service centers since the mid-1980s to record the receipt of various types of applications. In the service centers, the data entry is performed into the Local Area Network of CLAIMS.

<sup>52</sup> The key entry operator places the remittance in a lock box. The fee also is recorded in the database entry for the application. At the end of the day, the amount in the lock box is compared against the total amount entered on the applications processed to ensure financial accountability. We were told that the fees from applications processed at the TSC amount to approximately \$12.5 million per month.

<sup>53</sup> The information captured from an I-539 application for change of status includes the date received at the TSC; the name and address of the alien; the date the alien's present nonimmigrant status expires; and the admission number from the alien's I-94 form.

<sup>54</sup> The bar code label containing the unique file number is used to track the receipt file throughout the remainder of the adjudication process. As the file proceeds from Data Entry through each successive stage of the process, it is checked in and out by employees who scan the bar code. The locations of the file as it makes its way through the process are stored in the Receipt and Alien File Accountability Control System (RAFACS). The RAFACS entries identify the date of the action and the Responsible Party Code to which the file was checked in or out. The Responsible Party Code may be a work station, a file shelf location, or an INS employee.

the application has been received at the TSC. These receipt notices are printed and mailed out within one to two days.

Following data entry, the files are sent to a “2-day hold” area to allow the contractor time to ensure that the money collected by the key operators tallies with the amounts inputted into the system. Once the daily receipts are balanced and the money is deposited, the batched receipt files are scanned into RAFACS and are sent to the Work Distribution Unit (WDU) in the file room. Receipt files are stored in the WDU until they are requested or “called up” by INS personnel for adjudication. The files are stored in the file room in order of date received by the TSC mail room.

Files are “called up” by Supervisory Center Adjudication Officers (SCAOs), who send a work order to the WDU requesting that the contractor deliver a specified number and type of receipt files to the SCAO or directly to designated CAOs.

The WDU fills the work order by gathering the requisite number and type of files (oldest files first), scanning the bar codes into RAFACS, and moving the files from the Mesquite facility to a small mail room operation at the Dallas facility, which is also run by the contractor. Contractor personnel at the Dallas facility deliver the mail to the person or area, including CAO work areas, designated in RAFACS by the Responsible Party Code. We were told that on average it takes one to three days from the request to the receipt of files. When CAOs receive the files, they acknowledge receipt by scanning the bar code label into RAFACS.

## **2. The adjudication process**

CAOs at the TSC are assigned to one of several Adjudications Divisions. Each Division is responsible for one or more “product lines” consisting of one or more types of applications. In July and August 2001, when Atta’s and Alshehhi’s applications were adjudicated, I-539s were under the Division that also had responsibility for naturalization applications (N-400s).<sup>55</sup>

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<sup>55</sup> The service centers mainly handle only clerical processing with respect to N-400s, and the actual adjudication takes place in INS’s district offices. However, denials of naturalization applications are completed in the service centers.

CAOs may approve or deny an application for a change of status or request additional evidence. After the CAO makes the adjudicative decision, the CAO stamps the application and the student and school copies of the I-20 to indicate whether the application has been approved or denied, and if approved, the period of stay authorized. Following adjudication, the CAO updates the CLAIMS database to reflect the disposition of the application.<sup>56</sup> The CAO then sends the student copy of the I-20 to the applicant, reflecting the approval and authorized period of stay.<sup>57</sup> At the time that Atta's and Alshehhi's applications were adjudicated, the CAO also forwarded the school copy of the I-20 to a clerical employee, who periodically sent batches of school I-20s to the INS contractor responsible for processing and storing the I-20. The CAO then returns the receipt file – now minus the I-20s – to the Mesquite facility for storage.

### **C. The TSC did not adjudicate Atta's And Alshehhi's I-539 applications in a timely manner**

As indicated by the mail room's date stamp, the TSC received Atta's and Alshehhi's applications for a change of status on September 19, 2000.<sup>58</sup> Their applications were adjudicated and approved on July 17, 2001, and August 9, 2001, respectively – approximately 10 months and 10½ months after receipt and less than 2 months before the September 11, 2001, attacks. As discussed below, we found that the delay in adjudicating these applications was principally the result of a policy decision by the INS to assign a low priority to the adjudication of change of status applications, which led to a substantial backlog in I-539 applications awaiting adjudication at the TSC. We concluded that the delay was not the result of any action by the contractor that had responsibility for processing the applications.

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<sup>56</sup> This update causes CLAIMS to automatically generate an approval notice (INS form I-797) that is sent to the applicant separately from the I-20. No such approval notice is sent to the school.

<sup>57</sup> If the CAO denies the application, a denial letter stating the reasons for the denial is prepared and sent to the applicant. The school and student copy of the I-20 remain in the file.

<sup>58</sup> CLAIMS indicates that their applications were received on September 22, 2000, because that is the date that the applications were entered into CLAIMS.

Through RAFACS we tracked the process of Atta's and Alshehhi's applications through the TSC.

### **1. RAFACS history for Atta's I-539 application**

- On September 22, 2000, a data entry operator created the file in CLAIMS.
- On September 25, 2000, the WDU received the file from Data Entry and filed it in the area of the WDU reserved for I-539 applications awaiting adjudication.
- On July 6, 2001, the WDU transferred the file to the Dallas facility. Although the date of the work order requesting the file is not recorded in RAFACS, on average it took the contractor one to three days to fill a work order and transfer the files.
- On July 20, 2001, at 6:42 a.m., the file was checked in – i.e., receipt was acknowledged – by the CAO who adjudicated the file. It is unlikely that the file was in transit from the WDU to the CAO for 14 days. We were told that, much more likely, the file was delivered to the CAO's work station along with numerous other files within a few days of being charged out of the WDU, but that it is a common practice of CAOs to acknowledge receipt of a group of files as they prepare to adjudicate them, rather than when the files are physically received.
- On July 20, 2001, at 7:17 a.m., after adjudication of Atta's application, the CAO indicated in RAFACS that the file was "in transit" back to the Mesquite facility.
- On August 14, 2001, the WDU received the file from the Dallas facility and placed it in 90-day storage pending shipment to the Federal Records Center.<sup>59</sup>

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<sup>59</sup> The current CLAIMS record for Atta also indicates that his file number was accessed on March 12, 2002. It states that "data changed in record" occurred on that date. The OIG sought to determine the reason for this entry. The OIG found that a TSC CAO had learned about the I-20s arriving at Huffman Aviation in March 2002 and wanted to determine if she had adjudicated the files. She said that she accessed CLAIMS and opened the record but did

(continued)

## **2. RAFACS history for Alshehhi's I-539 application**

- On September 22, 2000, a data entry operator created the file in CLAIMS.
- On September 25, 2000, the WDU received the file from Data Entry.
- On May 2, 2001, the file was acknowledged as received by an Immigration Information Officer (IIO).<sup>60</sup>
- On August 7, 2001, the IIO transferred the file to the CAO who adjudicated the file.
- On August 8, 2001, the CAO who adjudicated the file acknowledged receipt of the file.
- On August 13, 2001, the CAO transferred the file back to the Mesquite facility.

The RAFACS history for the two applications reveals that the contractor at the Mesquite facility processed and prepared both applications for adjudication timely and consistent with the standard procedures in effect at that time. Both applications were entered into CLAIMS within three days after receipt at the TSC. They were received in the WDU and available for adjudication six days after receipt.

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(continued)

not make any changes. She said that she pressed the wrong key in an attempt to exit the record in CLAIMS.

<sup>60</sup> The OIG sought to determine the reason that the file was sent to an IIO. We were told that IIOs respond to telephone inquiries about applications and also adjudicate some less complicated applications. We were also told that while IIOs at the TSC are supposed to keep logs of telephone inquiries and the files that are pulled as a result of those inquiries, in actuality they do not. When the OIG interviewed the IIO to whom RAFACS indicated this file was sent on May 2, 2001, she said that it is possible that the file was assigned to her for adjudication and that she subsequently passed on the file because she had never been trained to adjudicate change of status applications for students.

### 3. Backlogs at the TSC

What is evident from the RAFACS data is that the cause of the delay in adjudicating the applications was that neither file was called up from the WDU by the INS for adjudication in a timely fashion. The Atta application sat in the WDU for almost ten months; the Alshehhi application sat in the WDU for approximately seven months and another three months passed before it was actually adjudicated. From the evidence available to the OIG, it appears that the delay in the INS's adjudication of Atta's and Alshehhi's applications was typical for the TSC. The OIG reviewed 70 other I-539 change of status applications for vocational students that were received by the TSC in September 2000 and determined that they too were adjudicated in July and August 2001.

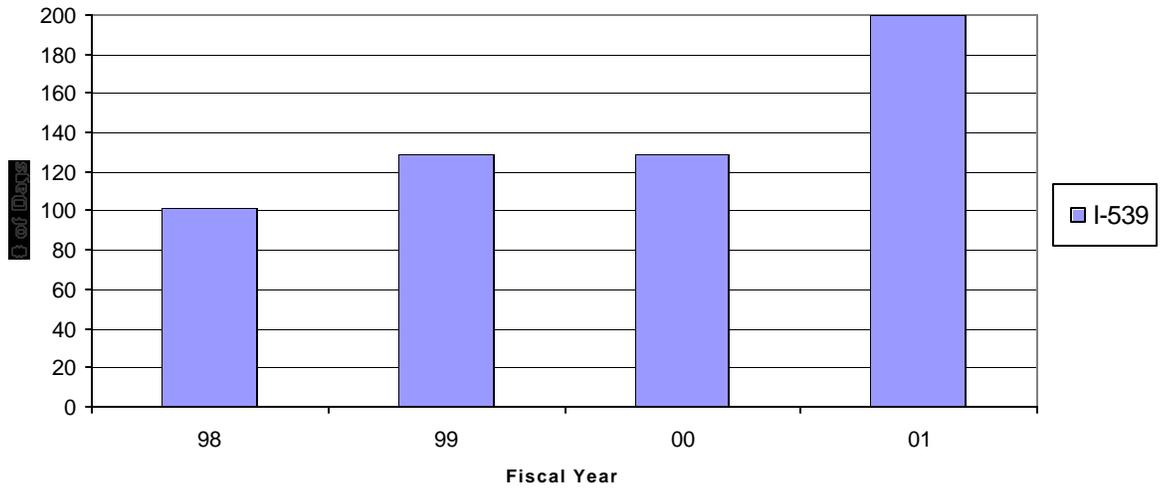
INS Headquarters and TSC personnel consistently told the OIG that adjudicating I-539 applications has always been a "low priority" at the INS and that this has resulted in substantial backlogs. The INS's emphasis since 1996, according to INS personnel, has been on naturalization (N-400s) and adjustment of status (I-485) applications.<sup>61</sup> For the past several years, adjudications priorities have been distributed via memorandum by the Deputy Executive Associate Commission for the Immigration Services Division. I-539 applications were not on the list of priorities until fiscal year 2002 (which began October 1, 2001). In the priorities memoranda, target processing times are listed for the priority adjudications, and the forms that are not listed as a priority are given a target processing time of 180 days. For fiscal year 2002, when processing I-539s became a priority, the target processing time was listed as five months.

The TSC's average processing times for I-539s have remained consistently high since at least 1998. Average processing time for I-539s for FY 1998 was 102 days; for FY 1999 it was 129 days; for FY 2000 it was 129 days; and for FY 2001 it was 200 days. The graph on the next page illustrates this point.

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<sup>61</sup> Adjustment of status applications are filed by immigrants seeking to change their immigrant status to become lawful permanent residents of the United States while change of status applications are filed by nonimmigrants seeking to change from one nonimmigrant classification to another.

**Texas Service Center  
Average Processing Time**



The TSC's actual processing time report for July 2001 shows that the I-539s being adjudicated in July 2001 had been pending for 282 days, or almost 9 months. The OIG also found that the TSC adjudicated significantly fewer I-539s in FY 2001 than in FY 2000.

As a result of the low priority given to processing I-539s at the TSC prior to May 2001, no group of adjudicators in the TSC Adjudications Divisions was dedicated solely to adjudicating I-539s. The INS does not have national standard operating procedures (SOPs) for processing I-539s, and each service center has developed its own procedures for handling them. In addition, TSC managers could not tell the OIG which Assistant Center Director for Adjudications had responsibility for I-539 applications prior to May 2001. TSC Managers stated that responsibility for the I-539 was shifted among different managers at different times. Many TSC managers told the OIG that prior to May 2001, I-539s were adjudicated only episodically when the backlog of applications grew "excessive." When this occurred, I-539s would be distributed to CAOs in all the divisions and, on some occasions, to Immigration Information Officers. The adjudication "blitz" would continue until the backlog was reduced to an acceptable level.<sup>62</sup>

In May 2001, the responsibility for I-539 applications was placed with a different Assistant Center Director for Adjudications, who had responsibility at the time for the product line that consisted of naturalization applications. She told the OIG that she was concerned when she reviewed the processing time report and saw that I-539s were taking several months to process.<sup>63</sup> She said that she asked the TSC managers at the time whether she could have additional personnel assigned to her group to adjudicate I-539s. She said that she was advised that additional personnel were not available but that she could assign two CAOs to adjudicate I-539s on a full-time basis. According to this Assistant Center Director, she assigned two senior examiners full time and she intended for them to continue to devote all of their time to I-539 applications

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<sup>62</sup> Since September 11, 2001, the INS has focused significantly more attention on I-539 applications. The TSC has since created a permanent supervisor who is responsible only for I-539 applications. The INS recently lowered the target processing time for I-539s to 30 days. For a further discussion of this issue, see Chapter Seven of this report.

<sup>63</sup> The processing time report from April 2001 shows that the TSC was then adjudicating applications received in August 2000.

until they asked to be switched from the assignment. These two adjudicators processed only I-539 applications from May 2001 until December 2001. One of these two CAOs approved Atta's application on July 17, 2001, and approved Alshehhi's application on August 9, 2001.

#### **4. Delay in the transmission of the school I-20 form to ACS**

As mentioned previously, at the time Atta and Alshehhi's applications were approved, school copies of I-20s were mailed to ACS, the INS contractor responsible for processing school copies of I-20s. Based on the available record, the OIG was unable to determine when the Atta and Alshehhi I-20s were mailed from the TSC to ACS in London, Kentucky. ACS received the school copies of Atta's and Alshehhi's I-20 forms on September 24, 2001, approximately 2 months and 2½ months, respectively, after the I-539 applications had been approved by the TSC.

Part of this delay was likely caused by confusion and administrative disorganization at the TSC. In July or August 2001, an Examinations Assistant was assigned to provide clerical support to the two CAOs processing the I-539 backlog.<sup>64</sup> E-mails provided to the OIG indicate that this employee was assigned to the backlog project on August 9, 2001, and that she did not begin mailing I-20s until August 20. Based on e-mails and interviews, we determined that personnel at the TSC were asked to instruct the Examinations Assistant in the correct procedures for mailing I-20s, but that there was some confusion about the correct address for ACS, the contractor in Kentucky. TSC personnel had sought guidance from INS Headquarters personnel on which address to use. A Headquarters employee provided two addresses for ACS, stating in an e-mail, "Its [sic] a little confusing, don't you think?"

The Examinations Assistant inquired on August 20, 2001, as to whether a determination had been made as to the proper address. Some time after she

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<sup>64</sup> TSC personnel were not able to describe to the OIG exactly how the I-20s were mailed before the Examinations Assistant was assigned the responsibility for collecting and mailing the I-20s. The TSC standard operating procedures in effect at the time did not address this issue and simply directed the CAO to send the I-20 to the contractor. We were told that the CAO would place the I-20 in "trays" located on two different floors of the building in Dallas and that the trays would be emptied periodically and the contents mailed to the contractor.

made the inquiry, she began mailing the I-20s to one of the two addresses provided by the INS Headquarters employee. By e-mail dated September 19, 2001, an INS Headquarters employee advised the TSC that she had obtained the correct address and identified one of the two addresses previously provided. This address, however, was not the address to which the Examinations Assistant had been sending the I-20s. A TSC employee forwarded the new address to the Examinations Assistant, telling her, “Don’t worry about the [I-20s] you have already sent to the [the incorrect address]. They’ll either figure it out or send them back to us.”<sup>65</sup>

## **V. ACS’s Processing of the School Copies of Atta’s and Alshehhi’s I-20 Forms**

In addition to the delay caused by the mailing problem, ACS, the data entry contractor in London, Kentucky, stored the school copies of Atta’s and Alshehhi’s I-20s for six months after processing them before returning them to the school.

In 2001, ACS provided data capture, storage, and retrieval services to the INS for a variety of INS forms, including the school copy of the I-20 form. ACS received Atta’s and Alshehhi’s I-20 forms on September 24, 2001, and extracted and processed the relevant information from those forms within several days. ACS then placed the forms in storage for six months, the period ACS believed that it was required to maintain the forms as set forth in its contract with Uniband.<sup>66</sup> On March 5, 2002, based on instructions issued by the INS in late February 2002 (the reasons for which are discussed more fully below), ACS mailed several thousand I-20s to the respective schools; among these I-20s were forms originally completed by Huffman Aviation and provided to Atta and Alshehhi. Huffman Aviation reportedly received the I-20s for Atta and Alshehhi on or before March 11, 2002.

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<sup>65</sup> The Examinations Assistant said that she presumed that the batch of I-20s sent to the incorrect address was forwarded to the correct address because she never received anything returned from the contractor. It is unclear, however, how the I-20s would have been returned to her since the envelope that she used for mailing contained only the generic return address for the TSC and no cover memorandum of any kind was provided with the I-20s.

<sup>66</sup> ACS worked under a subcontract with Uniband, Inc. (later Uniband Enterprises).

The evidence shows that ACS timely processed the I-20 forms associated with Atta's and Alshehhi's I-539 applications and placed them in storage. The evidence also shows that ACS operated under an understanding that its contract with Uniband provided that it should store the school copy of the I-20 for 180 days after processing was completed. What is unclear, however, is whether Uniband's contract with the INS – which was the basis for ACS's contract with Uniband – required something other than a 180-day storage requirement in the processing of I-20s. We found evidence that indicates that while the INS contemplated a storage requirement for other INS forms processed by Uniband and by ACS, the INS intended that I-20s be processed and returned to the schools within 30 days. But based upon the record available to us, we are not able to conclude what the actual intent of the contract was or who, if anyone, made a mistake with respect to the processing of I-20s. We are concerned, however, that the INS, through lack of attention to the contract, permitted the contractor to process forms contrary to the INS's intent.

#### **A. ACS contract to process INS immigration forms**

ACS is based in Dallas, Texas, and provides business processing and information technology services to commercial and government accounts. With respect to government accounts, ACS has contracts with various agencies of the federal government, including the INS.<sup>67</sup> Since approximately 1982, a wholly owned subsidiary of ACS or a predecessor company, either as a subcontractor or the prime contractor, has provided mail room services, microfilming, data capture, and document storage for multiple INS forms – in particular the I-20 form and some or all I-94 forms. These services have always been performed by ACS or its predecessor at a facility in London, Kentucky.<sup>68</sup>

Data captured from the forms by ACS is transmitted electronically to the INS for eventual upload into several INS databases: information from the I-94 forms is eventually included in the Nonimmigrant Information System (NIIS), the INS's principal record-keeping system for nonimmigrants; and information

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<sup>67</sup> In 2001, ACS had revenues of \$3 billion, employed approximately 35,000 people, and maintained 500 offices in 35 countries.

<sup>68</sup> The wholly owned subsidiary of ACS in London, Kentucky, is called ACS Business Process Solutions.

from the I-20 forms is eventually included in the Student and Schools System (STSC), which provides the INS with statistical information pertaining to nonimmigrant students and the schools that enroll them. However, ACS has not and does not enter data into these or any other INS databases directly or maintain any INS information systems.

From approximately 1982 to 1996, the INS contracted directly with ACS to process various forms, including I-20s and I-94s. In 1996, the INS awarded the prime contract to Uniband, Inc., a Native American tribal-owned company located in Belcourt, North Dakota. Uniband subcontracted with ACS to provide the processing and storage functions for most of the INS forms covered in the prime contract – including I-20s and I-94 departure records. In 1996, the INS awarded Uniband a 5-year contract for processing the various forms; Uniband, in turn, subcontracted most of the work, including the processing of I-20s, to ACS.<sup>69</sup> In October 2001, ACS became the prime contractor when the INS entered into a blanket purchase agreement with ACS to provide data entry and storage functions for several INS forms.<sup>70</sup> No INS employees work at the ACS facility in Kentucky, not even an employee responsible for monitoring the performance of ACS.

## **B. How ACS processes I-20 forms**

The ACS London, Kentucky, facility receives completed I-20 forms from INS service centers, ports of entry, and schools.<sup>71</sup> ACS employees pick up the mail from the post office and deliver it to mail room employees who open the

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<sup>69</sup> According to INS, the total value of this contract was approximately \$100 million.

<sup>70</sup> At the time that ACS was awarded the prime contract, ACS subcontracted the processing of I-94 arrival forms to Goodwill Industries in San Antonio, Texas, and to Uintah River Technology, LLC, a tribal-owned company in Duchesne, Utah. Under the present contract, the ACS facility in London, Kentucky, continues to process the I-94 departure forms and the I-20 forms. Because of a bid protest, ACS did not actually begin work under the new contract until December 18, 2001.

<sup>71</sup> When nonimmigrants obtain a student visa from a United States consulate, they will have both copies of the I-20 when they enter at a port of entry. The inspector stamps both the school copy and the student copy of the I-20, returns the student copy to the student, and sends the school copy to ACS. If a student transfers to a different school, the new school is responsible for issuing a new I-20 form to the student and for sending the school copy of the new I-20 form to ACS for data entry.

mail and separate the I-20s and other forms by type. Each type of form is then grouped into batches – I-20s are typically grouped in batches of 1000 – so ACS can estimate the number of each type of form received on a given day. These segregated batches are placed in records storage boxes, which are then dated. Prior to December 18, 2001, ACS was not required to log any of these mail receipt operations into a tracking system.<sup>72</sup>

The set-up boxes, each containing batches of a specific type of form received on a given day, are moved from the mail room to the document preparation station, where ACS employees ensure the documents are ready for scanning and microfilming. Prior to December 18, 2001, this was the first point in the process at which the boxes were logged into a tracking system. Document preparation employees check the forms for the required signatures (on the I-20, the nonimmigrant's signature and the designated school official's signature), label multiple copies of forms and attachments as such, and repair any rips or tears in the documents. The boxes are then logged out and sent to the Microfilming/Scanning section.

At the Microfilming/Scanning work station, I-20 forms and any attached documentation are microfilmed and image scanned.<sup>73</sup> For each receipt date, ACS makes two sets of the microfilm – an original and duplicate. The duplicate microfilm is shipped immediately to the INS Records Management Branch, in Washington, D.C.; the original microfilm is held for 30 days and then shipped to the same place. The scanned images of the I-20s are used solely for processing purposes. The images are electronically transmitted to different computer workstations within the London, Kentucky, facility and to other ACS facilities for data entry. The scanned images eventually are

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<sup>72</sup> For mail received after December 18, 2001, the date ACS began work under the new contract, information on each box set up by the mail room is entered into a tracking system (called the Master Control Program). The system captures the ID code of the employee creating the box and the date/time the forms in that box were received and processed, and generates a box header sheet with a bar code. The mail cannot progress to any other workstation in the facility until the appropriate entries are made in the tracking system. This tracking system is separate from the tracking system used at the TSC. Different bar code numbers are used at each facility.

<sup>73</sup> Most of the other INS forms ACS receives for processing do not require microfilming.

discarded as authorized by the contract. Following scanning, the computer system transmits small batches of the I-20 images to data entry operators.

At Data Entry, operators capture certain information from the forms: for I-20s, they enter information about the student and school, dates of expected attendance, type of status (F-1 or M-1), major field of study, and name of the designated school official.<sup>74</sup> If the I-20 does not reflect a valid school code, it is returned to the INS district office with responsibility for the school. Data entry operators keyed in between 800 and 850 I-20 forms each day.

After data entry, the captured information is transmitted to Quality Control, which randomly samples forms to ensure that data entry accurately captured the requisite information.<sup>75</sup> Additionally, at this stage the computer system runs an automated edit check that flags certain problems.

After completion of the quality control review, the “source documents” (such as the school I-20s) are sent to storage; the data captured from the forms are transmitted in ASCII form electronically to the INS data center,<sup>76</sup> where another INS contractor, Electronic Data Systems (EDS), is responsible for eventually uploading the information in the appropriate INS database, such as NIIS and STSC. The ACS tracking system is updated to show the time spent in Data Entry/Quality Control and the date the information was transmitted to EDS. Under the terms of the 1996 contract, Uniband, and ACS, as the subcontractor, had five calendar days to process I-20s from point of receipt to data transmission to the INS data center. Under the new contract, effective December 18, 2001, ACS must accomplish the process in three calendar days.

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<sup>74</sup> ACS is not required to capture the unique receipt file number (Service Center Number) assigned by the service centers to I-539 applications and written on the I-20 form by the CAO at the time of adjudication.

<sup>75</sup> Data entry operators in quality control actually re-key in the information from the scanned images. If these quality control operators key in something different for a particular data item than the original data entry operator keyed in, then the computer system generates an error message. For each error message, the quality control operator must re-key the data item to verify that there was not a keystroke error. If the re-key is correct, but the error message persists, the quality control operator must correct the original data entry operator’s mistake.

<sup>76</sup> This data center is referred to as the Justice Data Center and is located in Dallas, Texas.

After the source documents are microfilmed, scanned, and data entered, they are stored for a specified time period, depending upon the type of form. The source documents were moved from the Data Entry section to an on-site storage portion of the facility, which maintains the documents in records storage boxes that specify the date received at ACS and by form type. ACS personnel told the OIG they understood that it is necessary to archive these documents for some period in case the source documents are needed for forensic purposes or as evidence in legal proceedings. The contract in effect at the time estimated that the INS would request the contractor to retrieve 6,000 documents annually. In 2001, ACS received eight requests from the INS to retrieve archived documents; three of these requests were for student forms.<sup>77</sup>

Following the prescribed storage period, ACS mails the school copy of the I-20 to the school. To prepare the school copy of the I-20s for mailing, the forms are fed into a machine that trifolds each form so that the school address (completed by the school) will show in an envelope window. The folded forms are then fed into a second machine, which stuffs the forms in an envelope and seals the envelope. Clerical personnel then complete a quick quality control check that consists of flipping through the stack of envelopes to make sure the address shows in the window. The envelopes are put in a mail tray and delivered to the Post Office.

The contract authorizes ACS to destroy most of the other source documents after the storage period has expired.

### **C. The mailing of Atta's and Alshehhi's I-20s to Huffman Aviation**

Officials from both Uniband and ACS told the OIG that they understood the contract between Uniband and the INS in effect in September 2001, when ACS received the adjudicated Atta and Alshehhi I-20s, to require ACS to store the school copy of the I-20 for 180 days. They also stated that following the requisite storage period, the contract required ACS to return to the school, and not destroy, the I-20 form. As a result of these contractual requirements, they maintained, ACS was obligated to maintain possession of the original (school

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<sup>77</sup> The eight requests required retrieval of more than 22,000 documents in storage at the ACS London, Kentucky, facility. A single request required retrieval of 22,904 documents.

copy) I-20s for Atta and Alshehhi until March 24, 2002 (180 days after the date of receipt, September 24, 2001).

ACS mailed the school copies of the I-20s of Atta and Alshehhi to Huffman Aviation as part of a mass mailing on March 5, 2002. Huffman Aviation received Atta's and Alshehhi's I-20s on or before March 11, 2002, approximately two weeks before the 180-day storage requirement expired. This mailing was initiated at the direction of the INS. Representatives from ACS told the OIG that it was obligated to process all work received before December 18, 2001, the date its contract with the INS took effect, under the terms of its former subcontract with Uniband and to process all work received after December 18, 2001, under the terms of the new contract, which required ACS to return the I-20s to schools within 30 days.<sup>78</sup> In late February 2002, INS representatives met with ACS at the London, Kentucky, facility to discuss the execution of the new contract. With respect to all forms that were being held in storage under the terms of the previous contract, the INS asked ACS to accelerate the rate at which it was sending out archived I-20s to bring its inventory of archived I-20s in line with the requirements of the new contract. In compliance with this request, ACS conducted several mass mailings of forms within a several day period. On March 5, 2002, Atta's and Alshehhi's I-20s were part of one of these mass mailings that included 4,000 forms and were therefore not maintained for the entire 180-day period.<sup>79</sup>

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<sup>78</sup> When ACS was awarded the new contract, Uniband – the only other company that made a bid for the contract – filed a protest with the INS. Between October and December 18, 2001, while the protest was being assessed, ACS processed forms under the terms of the previous contract. This bid protest did not affect the processing of the Atta and Alshehhi I-20s, which had been received on September 24, 2001.

<sup>79</sup> After reviewing the draft report, the INS obtained from ACS a letter dated May 9, 2002, in which ACS stated that it did not receive any written instruction from the INS to mail I-20s on March 5, 2002. The INS asserted in its written response that it was “not aware of any such written or oral instructions to ACS.” It is not clear to us why the INS underwent such effort to dispute a point that is not made in the report. We do not assert that the INS directed ACS to mail I-20s on March 5, 2002. INS representatives met with ACS in late February 2002 and discussed reducing the inventory of forms being stored under the terms of the previous contract by mailing them as soon as possible. In response to these instructions, ACS conducted several mass mailings, one of which occurred on March 5.

**D. OIG’s analysis of ACS’s processing of the I-20s**

**1. Atta’s and Alshehhi’s I-20s were handled in the same manner as other I-20s received by ACS at the time**

The path that the Atta and Alshehhi I-20 forms took through the ACS facility and how long they remained at each station can mostly be determined from data entered into the tracking system used by ACS at the time (and with minor changes in place today). As explained above, the system does not track individual forms; it tracks “batches,” small numbers (50 or so) of the same type of form grouped together for processing.

The tracking system contained the following information on the two batches of I-20s containing the Atta and Alshehhi forms.

**a. Atta’s I-20**

Receipt at ACS	9/24/01
Start of batch scanning	9/25/01 12:27 PM
Completion of scanning	9/25/01 12:32 PM
Start of batch data entry	10/02/01 2:30 PM
Completion of batch data entry	10/02/01 3:17 PM
Start of batch quality control review	10/03/01 6:23 AM
Completion of batch quality control review	10/03/01 6:24 AM
Start of batch data transmission	10/05/01 8:10 AM

**b. Alshehhi's I-20**

Receipt at ACS	9/24/01
Start of batch scanning	9/25/01 12:29 PM
Completion of scanning	9/25/01 12:32 PM
Start of batch data entry	10/02/01 2:32 PM
Completion of batch data entry	10/02/01 3:17 PM
Start of batch quality control review	10/03/01 6:23 AM
Completion of batch quality control review	10/03/01 6:25 AM
Start of batch data transmission	10/05/01 8:10 AM

Based on the information logged by ACS as the forms made their way through the process, it took ACS approximately 10 calendar days to process the Atta and Alshehhi I-20 forms from receipt through transmission to the INS. Although it took ACS twice the 5-day contract requirement to process these two files, the tracking system data shows that the forms were not unduly delayed at any stage of the process. Moreover, it appears that the delay resulted from an enormous volume of forms submitted to ACS following September 11, 2001.<sup>80</sup>

The evidence also shows that Atta's and Alshehhi's I-20 forms were not processed any differently from other I-20s submitted around that same time period. In each case, ACS processed the I-20s from receipt through data

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<sup>80</sup> In the two weeks following September 11, 2001, ACS received more than twice the number of I-20s it was anticipating. For the months preceding September 2001, ACS received on average 46,233 I-20 forms per month. In September 2001, ACS received 115,516 I-20s, the bulk of which was received after September 11, 2001. On a single day in late September 2001, ACS received approximately 19,000 I-20 forms.

transmission within a matter of days, stored the I-20s for 180 days, and returned the I-20s to the appropriate school.

## **2. The contract requirements for handling I-20s after processing**

While we found that ACS did not process or store the Atta and Alshehhi I-20s differently from other I-20s, we found evidence that the INS had intended for I-20s to be mailed to schools within 30 days of processing, not after 180 days of storage. This 30-day processing requirement appears to have been in the INS's previous contracts for processing these forms. In addition, the language in ACS's current contract is almost exactly the same as the language in the prior contract – the one in force in September 2001 – and requires ACS to return I-20s within 30 days of processing. Below we discuss these contractual requirements because we found that the INS may not have provided sufficient attention to this contract to ensure that the contractor and its subcontractor's performance was consistent with the INS's intent.

The 1996 contract between the INS and Uniband contained several provisions defining the time period the contractor was required to store documents following processing.<sup>81</sup> At least one of these provisions also provided that following passage of the storage period, the contractor was to destroy the forms.<sup>82</sup> The contract also contained a provision specifically requiring the contractor to return the school copy of the I-20 to the school within 30 days after processing.

Section C.5.1.3 of the contract, entitled "Document Storage, Retrieval and Disposal," stated:

The Contractor shall store all original source documents for a period of 120 days, except for the Visa Waiver I-94, I-94T and I-92 documents. These documents shall be stored for a

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<sup>81</sup> The contract between Uniband and ACS did not shed any light on this issue. It simply provided that "[ACS] shall provide storage/retrieval and destruction services of all document types, according to specific contract requirement."

<sup>82</sup> Following the events of September 11, 2001, the INS directed its contractors not to destroy any archived documents.

period of one (1) year.... Original documents shall be destroyed within 7 days after the document's storage period has expired.

The same section of the contract, however, contained a provision – Section C.5.1, entitled “Document Collection and Control” – that referred to special processing requirements for certain specified documents:

The Contractor shall provide, implement, and maintain procedures to ensure the receipt, accountability, and control of approximately sixty million (60,000,000) documents from various locations ... throughout the United States and Canada. Samples of the forms and documents to be processed and specific requirements for the processing of each document are provided as Attachments B and C, respectively, in Section J of this contract.

Attachment C to Section J of the contract, entitled “Specific Forms/Documents Processing Requirements,” contained a provision providing several specific processing requirements for I-20 forms. That provision provided, in pertinent part:

I-20A/B, I-20M/N

*Return page 1 of the I-20 to the school thirty (30) days after processing.*

(Emphasis added.)

In July 1998, the INS issued a Task Order (what we refer to as Task Order No. 1) to the contract that included a Statement of Work effectively superseding the description of the work set forth in Section C.5 of the contract. The most significant change was that I-92s would no longer be stored for one year but for 180 days. Other forms would continue to be stored for 120 days. Task Order No. 1 also contained, however, a paragraph entitled “Scope of Work,” that repeated word-for-word the provisions in Section C.5.1 of the underlying contract, quoted above, which refers to the specific requirements for particular forms as stated in the attachments, specifically Attachment C.

The INS and Uniband modified Task Order No. 1 and thus the contract in August 1998. The modification changed the standard storage period for original source documents from 120 days to 180 days. But this modification did not, at least explicitly, modify or amend the provisions in the Scope of Work clause in Task Order No. 1, which incorporates by reference the specific

requirements for particular forms as stated in the attachments, specifically Attachment C.

Several ACS employees acknowledged that at some point in the past, ACS did return I-20 forms to the schools within 30 days. These employees recalled that the storage requirements for I-20s changed from 30 days to 120 days and then again to 180 days, although they did not recall when the changes occurred or what precipitated the changes.

ACS representatives told the OIG that it was their understanding that the August 1998 modification to the contract superseded the prior storage requirements for all source documents and set a new storage requirement of 180 days.<sup>83</sup> It appears that ACS followed this interpretation for several years – until December 2001, when ACS signed a contract with INS that, like the 1996 contract with Uniband, specified a 30-day storage requirement for I-20 forms in Attachment C to the contract.

Based upon our reading of the contract and subsequent modifications, we believe that it was the INS's intention that I-20 forms be returned to the schools in 30 days, as explicitly set forth in Attachment C to the original contract. Our interviews with the INS personnel who were responsible for managing the Uniband contract did not result in any further clarity regarding the INS's intent with respect to the processing of I-20 documents, as expressed in the special processing requirements in Attachment C, or whether at some point that intent

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<sup>83</sup> After reviewing a draft of this chapter of the report, ACS in its written response stated, "until we reviewed the draft report, ACS had never seen the specific language governing the storage of I-20 documents found in Att. C to the Uniband prime contract." ACS also asserted that it adhered to the provision in the INS/Uniband contract that governed storage of source documents (Section C.5.1.3 discussed above) as that provision was modified over time. We note, however, that ACS did not destroy I-20s after the storage period expired as the storage provision required but instead returned the I-20s to the schools. The requirement that I-20s be returned to the schools was contained in the special processing requirements set forth in Attachment C to Section J of the INS/Uniband contract. In addition, ACS was aware of other specific processing requirements for the INS forms it handled – such as the data elements required to be captured – which were set forth in other attachments in Section J of the INS/Uniband contract. Furthermore, we note that ACS's subcontract with Uniband specifically referenced the INS/Uniband contract Statement of Work and that the Statement of Work contained paragraph C.5.1, which specifically provided that special processing requirements for certain forms were in Attachment C.

changed and the INS sought to have all forms handled by ACS processed and stored for 180 days.<sup>84</sup>

The management and oversight of this contract was the responsibility of the INS's Office of Information Resource Management (IRM), which is a component of the Office of Management. IRM personnel responsible for this contract believed that administration of this contract should have fallen to the Inspections Division, and they sought to have administrative responsibility for the contract reassigned to Inspections.<sup>85</sup> As a result, IRM assigned the contract a low priority. The Contracting Officer's Technical Representative (COTR) within IRM who had responsibility for the INS-Uniband contract told the OIG that, because of other duties he was assigned, he exercised minimal oversight of the contract. He stated that he visited the Uniband facility only once prior to the day the contract was closed out and similarly visited the ACS facility only once. Neither visit was for the purpose of reviewing any specific contract requirements. He stated that at the time he was not familiar with the terms of the contract, and there is no evidence that he made any effort to monitor the contractor's compliance with the provisions of the contract.<sup>86</sup> As one employee who dealt with the contract told the OIG, IRM's management of the Uniband contract was tantamount to "non-management." As a result of this "laissez-faire" monitoring of the contractor's performance, it does not appear

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<sup>84</sup> The INS's present contract with ACS is structured exactly the same as the 1996 contract. The section entitled "Description of Work" contains both a general documents storage provision (Section 3.1.3), and a provision specifically noting that "[s]pecific requirements for the processing of each document are provided as Attachment C . . . ." (Section 3.1). Attachment C contains a provision requiring the contractor to return the school copy of the I-20 within 30 days after processing. Since ACS began work under the new contract in December 2001, it has been complying with the 30-day requirement for processing I-20s.

<sup>85</sup> Responsibility for the INS contract that was awarded to ACS in October 2001 has been placed in the Inspections Division.

<sup>86</sup> The IRM employee stated that in the past, a group of INS employees was stationed at the facility to monitor the contractor's performance of the contract, but that for budgetary reasons, the group was disbanded. Since that time, the INS has not had any personnel stationed at the ACS facility.

that the INS ever advised Uniband or ACS that its 180-day storage of I-20s was inconsistent with the terms of the contract.<sup>87</sup>

## **VI. OIG Conclusions Regarding the Delay in Sending the I-20 Forms to Huffman Aviation**

Huffman Aviation received its copies of Atta's and Alshehhi's I-20 forms in March 2002, more than a year and a half after the forms were submitted to the INS in September 2000 and approximately seven months after the I-539 change of status applications were approved in July and August 2001.

We found that the delay in sending the I-20 forms to Huffman Aviation was attributable to several causes. First, the INS did not adjudicate Atta's and Alshehhi's I-539 change of status applications for approximately 10 months. The INS has historically placed a low priority on the adjudication of I-539 applications, and the adjudication of these applications was significantly backlogged in 2001.

Second, after Atta's and Alshehhi's applications were approved in July and August 2001, ACS did not receive the I-20 forms from the INS for approximately two months after adjudications. Processing was delayed for many weeks due to disorganization in the INS's system for mailing the I-20s to ACS.

Third, ACS processed Atta's and Alshehhi's I-20 forms quickly upon receipt in September 2001 but did not mail the forms to Huffman Aviation for almost 180 days. ACS's actions were consistent with its understanding of its contract at the time and were consistent with its handling of other I-20 forms processed by ACS at the time. However, we found evidence that the INS had intended for the I-20s to be mailed to schools within 30 days not after 180 days.

We are troubled by the INS's lack of attention to its contract with Uniband and its lack of attention to the performance of ACS in processing I-20s. Even operating within a system that designated I-539s as a low priority, we believe that the INS's Office of Information Resource Management, which

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<sup>87</sup> After reviewing a draft of the report, the INS acknowledged that "program mismanagement was a factor" and asserted that it had "constructively accepted" ACS's storage of I-20s for 180 days because it never objected to ACS's actions.

was responsible for monitoring the contract, should have been more familiar with the terms of the contract and exercised more oversight to ensure that its contractor was abiding by the INS's understanding of the terms of the contract, especially since no INS employees worked at the ACS facility. We believe that the INS should have paid more attention to the performance of the contract.

## **VII. Adjudication of Atta's and Alshehhi's I-539s**

In addition to investigating what caused the delay in the INS's processing of the I-20s that were sent to Huffman Aviation on March 11, 2002, we evaluated whether the INS properly approved Atta's and Alshehhi's change of status applications.

The adjudication of I-539 change of status applications consists primarily of a review to ensure that the applicant has submitted the proper documents and the proper fee. This process is not designed to screen for potential criminals or terrorists; it is designed to ensure that applicants can demonstrate that they have the financial resources to support themselves while in the United States. INS employees at all levels told the OIG that the INS's philosophy with respect to applications for INS benefits, and specifically the change of status benefit, is that applicants are presumptively eligible for the benefit unless they affirmatively demonstrate that they are not eligible. The percentage of approvals for I-539 change of status applications (not including extension of stay applications) has been 83 percent, 88 percent, 90 percent, and 91 percent for fiscal years 1998, 1999, 2000, and 2001, respectively, and field personnel told the OIG that in their experience the majority of the denials stem from an applicant failing to timely file the change of status application.<sup>88</sup>

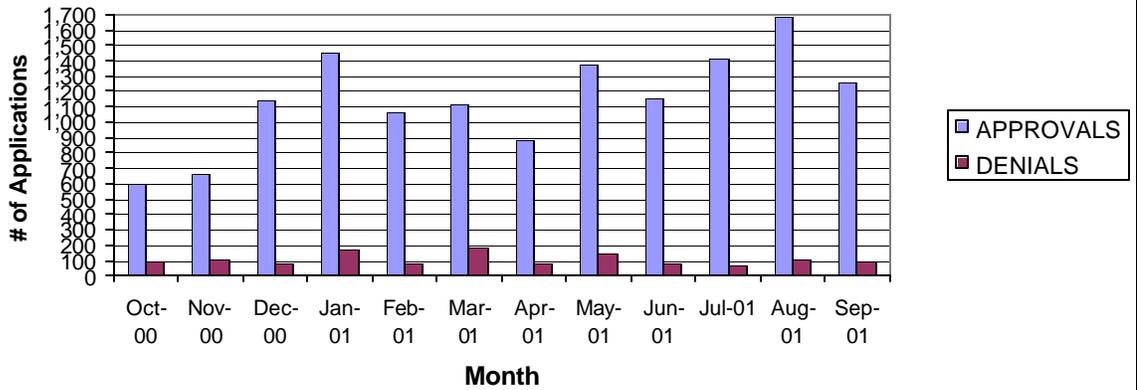
### **A. Requirements for approval for I-539 change of status**

In the sections that follow, we discuss several issues related to the change of status adjudication process.

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<sup>88</sup> We provide a graph on the next page depicting the number of approvals and denials of I-539 change of status applications in the TSC in fiscal year 2001.

### Texas Service Center FY01 I-539 Change of Status Only



## Signature requirement

When a CAO initially receives a file containing a change of status application for student status, the CAO should first ensure that the I-539 has been signed and that the two I-20s have been signed by the school official and by the student.<sup>89</sup> If the forms have not been signed, the adjudicator is supposed to return the entire application to the applicant. However, this procedural requirement is not explicitly stated in the SOPs for the I-539 applications that were in use at the TSC at the time that Atta's and Alshehhi's applications were adjudicated. TSC personnel stated that since the signature requirement pertains to all forms adjudicated in the service centers, it was not considered a requirement particular to the I-539 and therefore unnecessary for inclusion in the SOPs. In addition, the signature requirement is not addressed in the Adjudicator's Field Manual, since the portions of the INS's Adjudicator's Field Manual that address nonimmigrants have not yet been completed.

With respect to Atta's and Alshehhi's I-539 applications, both signed the I-539 forms and submitted the appropriate fee. The school copy of both Atta's and Alshehhi's I-20s were signed by an official representing Huffman Aviation, but not by Atta or Alshehhi.

We learned in interviews with TSC personnel that adjudicators consistently return I-539s that have not been signed. But with respect to the I-20 forms, which require the signature of the school official and the student, CAOs often do not return the application form to the student if the I-20 has not been signed by the student, only if the I-20 is not signed by the school official. Instead of returning the application to the student, the CAO normally makes a note to the student that the student copy of the I-20 must be signed, and this information reaches the student when the student copy of the I-20 is returned to the student after adjudication. According to TSC personnel, CAOs have adopted this practice because it is more efficient than returning the entire application to the student simply to obtain a signature. TSC personnel stated that since the student copy of the I-20 must be signed by the student to re-enter

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<sup>89</sup> As stated previously, contractor clerical personnel initially review the I-539 to ensure that it has been signed and that the appropriate fee has been attached. The CAO's review of the I-539 for the signature is the second review in the process.

the country, the student would eventually be required to sign the form by an inspector at the port of entry.

### **1. Proof that applicant timely filed the application**

Another preliminary step that the CAO must conduct is ensuring that the applicant filed the application prior to the lapse of his or her current status. On the I-539 form, applicants state their current nonimmigrant status and the date that the status expires. This information can be verified by the CAO by reviewing the copy of the arrival I-94 submitted by the applicant. TSC personnel told the OIG that the TSC considers the application “received” when INS date stamps the application in the mail room. If the CAO determines that the application was not timely filed, the adjudicator will set the application aside in a stack of files that the adjudicator later prepares for denial.<sup>90</sup>

In this case, Atta and Alshehhi timely filed their I-539 applications. The TSC received Atta’s and Alshehhi’s applications on September 19, 2000, and they were both data entered on September 22, 2000.<sup>91</sup> Atta’s admission as a B-2 visitor on June 3, 2000, was not scheduled to lapse until December 2, 2000. Alshehhi’s admission as a B-2 visitor on May 29, 2000, was not scheduled to lapse until November 28, 2000.<sup>92</sup>

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<sup>90</sup> TSC personnel told the OIG that CAOs typically set aside one day of the week to handle denials, returns, and requests for information. With respect to denials, the CAO prepares a denial letter that is sent to the applicant. Denials of change of status applications cannot be appealed.

<sup>91</sup> Atta and Alshehhi actually enrolled in Huffman Aviation at the end of August but did not file their change of status applications with the INS until September 19, 2000. This was permissible under the law at the time because the law did not require persons who wished to change to student status to file the application prior to starting school. 8 CFR § 248.1(c). Since September 11, 2001, the INS has taken steps to change this regulation and recently issued a proposed interim rule to require nonimmigrants to complete the change of status process before beginning school. This proposed regulation change is discussed in Chapter Seven, Section III A of this report.

<sup>92</sup> Alshehhi incorrectly stated on his I-539 application form that he had entered the country on May 9, 2000. In addition, he also incorrectly stated that his current status was scheduled to expire on January 17, 2010; this date was the expiration date of his B-1/B-2 visa.

## 2. Evidence requirement

After the CAO determines that the application form was signed and timely filed, the CAO must ensure that the applicant has submitted the proper evidence as required by law and by the instructions on the I-539. To change to nonimmigrant student status, the applicant must submit a copy of the I-94, a copy of his or her passport showing that it and the visa have not expired, and documentary evidence of financial support in the amount indicated on the I-20.

INS regulations do not define what constitutes sufficient “documentary evidence of financial support.” The portions of the Adjudicator’s Field Manual addressing nonimmigrants have not been completed, and the Field Manual does not contain any guidance for adjudicators on this issue. We also found no reference to this topic in INS’s Operations Instructions. According to Service Center personnel that we interviewed, there is no centralized guidance on what evidence is required to be submitted or what evidence should be considered in adjudicating an I-539 change of status application. As a result, each service center has developed its own guidance. TSC personnel stated that adjudicators are provided with examples of documents that can be submitted, such as copies of bank statements, a letter from a bank, or a copy of the parents’ tax return if the family, but not the student, is currently living in the country. With respect to students from European countries, TSC personnel stated that CAOs at the TSC are trained that a letter or affidavit from the parents stating that they will support the student is also acceptable. We found that much of the determination is left to the discretion of the adjudicator.

If an adjudicator determines that the appropriate evidence has not been submitted, the adjudicator can make a request for more evidence, which results in the application being put on hold until the applicant complies with the request. The adjudicator may also deny the application. If an adjudicator determines that the appropriate evidence has been submitted and that the other requirements discussed above have been met, the adjudicator will approve the application.<sup>93</sup>

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<sup>93</sup> According to TSC personnel, CAOs are not required to review the documents to determine if they might be fraudulent. Rather, adjudicators review the documents to determine if they are facially valid. One CAO told the OIG that it is not the role of the CAO to look behind or challenge the documents. However, TSC personnel also said that if the adjudicator notices something amiss about the copies of the documents submitted, the CAO

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In this case, Atta and Alshehhi each submitted copies of their I-94s, valid passports, and valid visas. In addition, each submitted a bank statement record signed by a bank official demonstrating a joint account between Atta and Alshehhi with a balance on September 6, 2000, of \$21,372.52. Atta and Alshehhi also each attached a handwritten note stating that each was being supported by his family and that money was being transferred to their account regularly. Atta and Alshehhi also submitted copies of a lease for a property that they were renting in Venice, Florida.

In sum, based on our review of the steps taken by the adjudicator and the evidence presented by Atta and Alshehhi, we concluded that the adjudicator approved Atta's and Alshehhi's I-539 applications in accord with INS policies and practices. Because the I-20s were not signed by Atta or Alshehhi, however, the adjudicator should have returned the applications. But TSC adjudicators rarely returned such forms without a signature.

#### **B. Length of stay for nonimmigrant vocational students**

Atta's and Alshehhi's I-20s stated that their course of study was from September 1, 2000, until September 1, 2001. Their admission period was noted on their I-20s as being from September 1, 2000, until October 1, 2001, which is one year plus 30 days. We investigated to determine whether this time period was appropriate.

As discussed earlier in this report, foreign students are permitted to stay in the United States for different lengths of time, depending on their status and course of study. Vocational students, or M-1 students, are authorized to be admitted "for the period of time necessary to complete the course of study ... plus thirty days within which to depart from the United States or for one year, whichever is less." 8 CFR § 214.2(m)(5). According to the guidance in the Inspector's Field Manual, however, the admission period for an M-1 student

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can send the file to the division within the service center that handles benefit fraud investigations – the Enforcement Operations Division. We found that in reality, adjudicators are discouraged from scrutinizing applications for possible fraud because of the pressure to produce completed adjudications. For a discussion of the production pressure faced by adjudicators, see Section VII D below.

cannot exceed one year.<sup>94</sup> As stated earlier in this report, the portions of the Adjudicator's Field Manual addressing nonimmigrants have not been completed.

According to the adjudicator in this case, his understanding of the law and INS policy was that a vocational student is entitled to be in status for only one year. He stated that he wrote in the end date of the admission period with an additional 30 days because it is the grace period that all vocational students are provided so that they can leave the country. He said that inspectors who encountered the I-20 would understand that the 30 additional days were the grace period only and not the time the student was considered in status. According to other Service Center personnel, this practice of allowing a vocational student whose course of study is one year an additional 30 days to vacate is not uncommon, and there is no INS policy prohibiting this practice.<sup>95</sup> INS inspectors interviewed by the OIG stated, however, that they admit vocational students only for one year even if the course is scheduled to last for one year and that no additional days are added for the "grace period."

In sum, we found that the law permits a vocational student to remain in status for a total of one year and that there is no provision for an additional grace period after the expiration of the 1-year period. In this case, the CAO's decision to include a 30-day grace period in the status period for Atta and Alshehhi was incorrect.

This mistake did not, however, affect the legal status of Atta and Alshehhi as of September 11, 2001. Even if Atta and Alshehhi had been given M-1 status for only one year, Atta and Alshehhi would have been in the country legally on September 11 based on their still valid B-1/B-2 visas. Moreover, Atta re-entered the United States for the last time on July 19, 2001, and was admitted as a B-1 visitor until November 12, 2001. Alshehhi was

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<sup>94</sup> Under "Terms of Admission" for M-1 students, the manual states: "Admit as M-1 to the end date of the course, as specified on the I-20, plus 30 days. Do not exceed 1 year."

<sup>95</sup> The INS Office of General Counsel attorney responsible for handling benefits issues told the OIG that in her opinion the regulation regarding M-1 students is ambiguous as to whether vocational students whose course of study is exactly one year are also entitled to the 30-day period within which to depart the United States that is given to all other vocational students.

admitted for the last time on May 2, 2001 as a B-2 visitor until November 2, 2001.

### **C. Information that could have affected the adjudication**

#### **1. Completion of the course by Atta and Alshehhi on December 19, 2000**

According to federal regulations, students are eligible for nonimmigrant student status only while they are pursuing a “full course of study.” Once students complete their course of study, they are no longer in student status and must leave the country.<sup>96</sup> 8 CFR § 214.1(a)(3). We sought to determine whether the school or the student has any obligation to report to the INS that the student has completed school or terminated his or her studies for some other reason.

With regard to students, the law does not require them to report any information to the INS about their student status. Students are obligated to leave the United States once they are no longer in student status.

With respect to schools, the reporting obligations are not clearly set out in the law. Section 101 of the INA, which defines academic and vocational students, includes the following language about academic and vocational schools: “... institution[s] shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant [academic or nonacademic] student and if any such institution fails to make reports promptly the approval shall be withdrawn.” 8 USC § 1101(a)(15)(f) and (m).

The regulations state that the INS will provide to the schools a list of students at least once a year, and once the schools have this list, they are obligated to notify the INS of any student on the list who is no longer in school or taking a full course of study. 8 CFR § 214.3(g)(3). We found that the INS has not provided these lists to the schools since 1989 because of problems with the INS’s computer system that records information about students, the Student

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<sup>96</sup> The regulations require that nonimmigrants must depart the United States at the expiration of their authorized period of admission or upon abandonment of their authorized nonimmigrant status.

and Schools System or STSC.<sup>97</sup> Unless the INS has requested information about the status of students, the schools do not have any affirmative obligation to report this information to the INS.

We also found that when schools voluntarily provide this information to the INS, the information is provided to the INS district office in which the school is located, but the INS rarely takes any action on this information. Moreover, the INS has no system by which this information, if reported, is shared with the service centers or put into any computer system.

The course of study for Atta and Alshehhi was defined on their I-20s as lasting from September 1, 2000, until September 1, 2001, and the TSC CAO approved their student status until October 1, 2001. However, Atta and Alshehhi passed the required examination to obtain a pilot's license on December 19, 2000, and had finished their course of studies at Huffman Aviation by the time the TSC CAO approved their change of status. But the

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<sup>97</sup> The OIG obtained a memorandum dated May 26, 1995, from the INS Commissioner to the Deputy Attorney General, which describes immigration controls on foreign students in response to specific questions by the Deputy Attorney General. One of the questions asked by the Deputy Attorney General was: "How regularly (semester-by-semester, annually, etc.) does INS check on whether foreign students are maintaining status?" The INS's response in part was:

Current regulations provide for sending a data print-out of 'F' and 'M' students listed in the Service's automated Student/School System as attending a school for the school to verify, correct, and return to the INS' contractor-supported data center to update the student information on the system. This massive revalidation effort has been suspended since December 1989 because major systemic limitations and data linkage problems within the STSC system-design related to file structure, ability to archive, purge or otherwise merge duplicate data contained in form-driven files relative to most current updates, could not be overcome.

The INS did not take any immediate steps to correct the problem. Instead, as the INS indicated in the next paragraph of the memorandum, the INS initiated "a study for correcting the system problems with the aim of engineering a database to effectively support all student and school information requirements, including an assessment of the viability of the current STSC database and alternative recommendations to establish a reliable repository of student and school data." This new computer system, the Student and Exchange Visitor Information System (SEVIS), is scheduled to be implemented in 2003. For a complete discussion of SEVIS, see Chapter Six of this report.

CAO had no information in the file or in any computer system by which he could have been aware that Atta and Alshehhi had completed the pilot's program in December 2000. Had the CAO been aware of this information, he would have approved the application but would have allowed admission only between September 1, 2000, and the end of the program, plus 30 days.

## **2. Lack of sufficient hours for "full course of study"**

An applicant is not entitled to change to student status unless the applicant is pursuing a "full course of study." For vocational students, a full course of study requires "at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or at least twenty-two clock hours a week if the dominant part of the course of study consists of shop or laboratory work." 8 CFR § 214.2(m)(9)(iii). Huffman Aviation billing records show that neither Atta nor Alshehhi attended school the required 18 or the required 22 hours per week. Accordingly, they did not meet the "full course of study" requirement.<sup>98</sup>

Nonetheless, the CAO had no way of learning that information. Schools are required to certify on the I-20 that each student has enrolled in a full course of study to obtain the M-1 visa or the change of status to an M-1. Once Huffman Aviation certified Atta's and Alshehhi's I-20s, the CAO had no reason not to accept the certification at face value. In addition, as stated above, the INS has not asked schools since 1989 to report students who are failing to take a full course of study.

## **3. Departures by Atta and Alshehhi while their I-539 applications were pending**

As discussed earlier in this report, Atta and Alshehhi left and re-entered the United States on two occasions while their I-539 applications were pending. The INS's stated policy is that nonimmigrant students abandon their I-539 applications if they leave the country while the application is pending and that the application should be denied by the adjudicator.<sup>99</sup> Therefore,

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<sup>98</sup> We discuss the issue of whether Huffman Aviation offers a full course of studies and should therefore be authorized to issue I-20s in Chapter Six of this report.

<sup>99</sup> The only written record of this policy that we were able to find was contained in a June 18, 2001, memorandum written by Acting Assistant Commissioner Thomas Cook

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according to this INS policy, Atta's and Alshehhi's applications should have been denied for abandonment.

The CAO who adjudicated their cases, however, was not aware that Atta and Alshehhi had departed the country, even though this information was in the INS's computer system. A nonimmigrant's arrivals to and departures from the United States are supposed to be recorded on I-94 forms, which are collected by inspectors when a nonimmigrant arrives into the country and are supposed to be collected by the airlines when a nonimmigrant departs the country. The airlines should send the forms to the INS to be data entered by an INS contractor and later uploaded into the INS's Nonimmigrant Information System (NIIS).

Although adjudicators have access from their computer terminals to NIIS, we found that CAOs were not required at the time to check NIIS before making a decision on an I-539 application. Unless a copy of the I-94 was not attached to the application and the CAO needed to access NIIS in order to confirm the date the applicant arrived, CAOs normally did not check NIIS.

On March 15, 2002, after the controversy about Atta's and Alshehhi's change of status applications surfaced, the INS issued new requirements with respect to processing I-539s, including the requirement that NIIS be checked before the I-539 is adjudicated.<sup>100</sup>

#### **D. Production pressures and the I-539**

We found that while CAOs have the ability to check NIIS and refer cases suspected of fraud to the Enforcement Operations Division, they do not routinely do so because of pressure to adjudicate cases quickly. For example, one experienced CAO told the OIG that he has not accessed NIIS regularly in the past because, even though it would only take approximately 30 seconds to

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purporting to reiterate INS's "long standing" policy. According to the TSC Supervisory CAO who is currently responsible for managing the processing of I-539s and who provides training to CAOs on I-539s, she did not see the Cook memorandum until March 21, 2002, when it was distributed to the field from INS Headquarters via e-mail.

<sup>100</sup> We discuss the INS's changes to the I-539 process in Chapter Seven of this report.

complete the transaction, it was not worth the time to do so because it would interfere with the CAO completing the required number of cases.

Moreover, adjudicators are evaluated based on the number of applications they complete. Their performance appraisal rating is based on a point system, and adjudicators receive points for each application or petition they adjudicate. The number of points assigned to an application is based on the complexity of the type of adjudication. For example, an adjudicator receives 15 points for each change of status application adjudicated. Although denial letters and requests for evidence require significantly more time for adjudicators to review, they do not receive any additional points for completing these transactions. According to the performance work plan for CAOs in effect between March 2001 and April 2002, to achieve an outstanding rating, a journeyman CAO would be required to obtain over 1,149 points during an 8-hour period. To obtain an excellent rating, the journeyman CAO would have to obtain 880 to 1,149 points. For the GS9/11 CAO, the outstanding level requires over 1,072 points in an 8-hour period, and the excellent rating requires 806 to 1,072 points. If we assume an average of 1,000 points and a CAO adjudicating change of status applications, this would require the adjudicator to complete approximately 66 applications in an 8-hour day. Factoring in 30 minutes for lunch but no breaks, an adjudicator would spend approximately 7 minutes on each application. To achieve the required 1,000 points, the CAO would actually have to complete cases even faster than this average, because the averages are calculated with no breaks and no delays such as preparing denial letters or requests for information. One experienced TSC adjudicator told the OIG that he adjudicates approximately 75 I-539 applications per day.

The U.S. General Accounting Office also recently observed the production pressure faced by adjudications officers and the effect this pressure has on an adjudicator referring cases for fraud investigation. See “Immigration Benefit Fraud: Focused Approach is Needed to Address Problems,” Report No. GAO-02-66, January 2002, p. 5 and p. 29. The GAO stated, “Some adjudicators told us that because of the pressure to adjudicate cases quickly, they did not routinely use investigations staff to look into potentially fraudulent applications: doing so would take more time and reduce the number of applications they could review.” The OIG has also addressed the impact of the production pressure faced by adjudicators on the quality of adjudications in our July 2000 report on the INS’s “Citizenship USA Initiative,” a program in fiscal year 1996 that targeted reducing the backlogs in the naturalization program.

## **E. OIG conclusions regarding the adjudication of Atta's and Alshehhi's change of status applications**

The adjudicator who approved Atta's and Alshehhi's change of status application did so in accord with INS policies and practices at the time. The process for reviewing these applications was not designed to uncover criminals or potential terrorists. Rather, it was a paper-driven process that required the applicant to meet minimal standards to obtain the desired change of nonimmigrant status. Applicants were viewed as presumptively eligible unless they clearly demonstrated that they were not eligible. On paper, Atta and Alshehhi met the requirements for change of status, and the adjudicator routinely approved their applications.

We noted several problems with the adjudication process, however. First, Atta and Alshehhi had not signed their I-20 forms, which technically should have resulted in the applications being returned to them. However, the TSC had adopted a practice of bringing the missing signature to the attention of the student by noting it on the student copy of the I-20, which was eventually returned to the student after adjudication of the application. The INS should determine whether this practice is consistent with INS policy and then address this issue in national standard operating procedures and the Adjudicator's Field Manual.

Second, the adjudicator approved Atta's and Alshehhi's admissions for one year plus thirty days. Federal regulations are clear that vocational students are permitted to remain in vocational student status for the length of their course of study, with a maximum of one year. The TSC practice of permitting vocational students whose course of study is one year an additional 30-day grace period may exist at other service centers. If, as it appears to us, this practice is contrary to INS regulations and policy, the INS should take steps to correct this practice.

Finally, and most importantly, we found that the adjudicator did not have complete information about Atta and Alshehhi before adjudicating their applications. Although Atta and Alshehhi had finished their course at Huffman Aviation by the time their applications were adjudicated, the process is not designed to collect this information and even if it were collected, to make this information known to adjudicators in the service centers. Similarly, Atta and Alshehhi were not entitled to student status because they were not taking a "full course of study" as required by law, but the INS did not have any system for collecting or otherwise providing this information to adjudicators. In

addition, the adjudicator was not aware that Atta and Alshehhi had departed the United States twice while their applications were pending, thus rendering their applications abandoned. Although the INS captures information about departures in its NIIS database, adjudicators were not required to access NIIS in every case to ensure that the applicant had not departed the United States while the application was pending.

In sum, while the adjudicator approved the applications in accord with standard INS practices and policies existing at the time, these practices and policies were significantly flawed. They resulted in adjudicators approving applications without complete information.

The INS has since revised some of its procedures for change of status applications and has proposed regulations that affect the processing of these applications. We address these processing and regulatory changes in subsequent chapters of this report.

## **CHAPTER FIVE**

### **THE INS'S FAILURE TO STOP DELIVERY OF THE I-20S TO HUFFMAN AVIATION**

#### **I. Introduction**

In this chapter of the report, we discuss the second question specifically presented to us by the Attorney General:

- Why did the INS fail to stop the delivery of the school's copy of the I-20 form after Atta and Alshehhi were identified as terrorists who participated in the attacks of September 11, 2001?

To investigate this issue, we interviewed managers and other employees in the two INS components with the most relevant jurisdictions over Atta's and Alshehhi's I-20s: the Immigration Services Division and the Enforcement Division. The Immigration Services Division had responsibility for the TSC; the Enforcement Division had responsibility for the investigative activity associated with the September 11 attacks and worked closely with the FBI. Both the Immigrations Services Division and the Enforcement Division fall within the Office of Field Operations. Below we describe the actions of INS employees in the aftermath of September 11 and their reasons for not retrieving the I-20s. Thereafter we analyze their actions and explanations.

#### **II. Actions of ACS and INS Employees**

##### **A. Actions of ACS**

Before addressing the INS's failure to stop the delivery of the I-20s to Huffman Aviation, we discuss ACS's role in this matter. We concluded that ACS should not be criticized for mailing out the forms. First, as a government contractor, ACS takes its direction from the INS. In addition, as discussed in the rest of the chapter, no one from the INS contacted ACS about Atta's and Alshehhi's I-20s. Absent instructions from the INS, ACS had no independent responsibility to check its records to verify whether it possessed documents related to terrorists from September 11.

Moreover, the processing of I-20s is a clerical function that is mostly automated. Although a clerical employee would have seen the names of Atta and Alshehhi when he or she data entered the information from the I-20s in October 2001, clerical employees at ACS had no responsibility for determining

whether the information they were typing was related to terrorists from September 11. In addition, as described earlier in this report, the mailing of the I-20s is a completely automated process. ACS personnel perform a quick quality control check that consists of making sure that the address of the school appears in the envelope window but do not see the name of the student when doing so.

For these reasons, we do not believe that ACS bears any responsibility for not stopping the I-20s from being mailed to Huffman Aviation.

## **B. Actions of the TSC personnel and INS Headquarters managers overseeing the service centers**

Immediately after the terrorist attacks of September 11, INS personnel checked their records regarding the individuals believed to be responsible for the attacks. By the evening of September 11, 2001, TSC personnel working on their own initiative determined through database searches that the TSC had granted M-1 student status to Atta and Alshehhi and that the receipt files were being stored in the Mesquite facility. The next morning, two TSC employees went to the Mesquite facility and retrieved the Atta and Alshehhi receipt files. Later that same day, TSC management and INS Headquarters personnel responsible for TSC operations (the Immigration Services Division) were aware that TSC personnel were in possession of two of the September 11 terrorists' files.

As this section describes, we determined that no INS manager or employee inquired about the location of Atta's and Alshehhi's I-20s or requested additional information about the files, such as the status of the I-20s. The Headquarters and TSC managers we interviewed indicated that they did not consider the issue of physically retrieving the I-20s. Most surprisingly, they told the OIG that even if they had thought about the I-20s, they were not aware that the I-20s were still being processed because the contractor stored the I-20s for 180 days before returning them to the appropriate school.

### **1. Retrieval of the Atta and Alshehhi files at the TSC**

The TSC's Enforcement Operations Division consists of eight Investigative Research Specialists (IRS), seven of whom handle investigations

into possible benefits fraud.<sup>101</sup> One of the IRSs is a computer specialist who manipulates and searches INS's computer systems for data that would be useful in benefits fraud investigations. The IRSs report to the TSC Assistant Center Director for the Enforcement Operations Division, Gary Bradford. On September 11, Bradford had been for several weeks the Acting Deputy Center Director. He was on vacation the week of September 11. Bradford did not return to the office until the following Monday. One of the Investigative Research Specialists was the Acting Assistant Center Director in Bradford's absence and had been for several weeks prior to September 11.

Two of the TSC's other IRSs stayed at work on September 11 on their own initiative and began running computer checks based on information they obtained about the terrorists from news services and the Internet. According to one of these IRSs, by the evening of September 11, he and his co-worker had determined that Atta and Alshehhi had submitted I-539 applications to the TSC and identified that the TSC had the receipt files of both. On the morning of September 12, the IRSs went to the TSC file room, located in the auxiliary facility in Mesquite, Texas, and retrieved both receipt files. The IRSs said they notified the Acting Assistant Center Director for the Enforcement Operations Division, who in turn notified Bradford and the Acting Service Center Director, Carmelo Ortiz.

The Acting Assistant Center Director told the OIG that he also e-mailed the TSC's point of contact at INS Headquarters in the Enforcement Division of the Office of Field Operations, who is a Senior Special Agent, to inform him that the TSC had the files and that he would await direction from INS Headquarters as to what to do with the files. According to the Acting Assistant Center Director, he also faxed the I-539s to the Senior Special Agent's attention at INS Headquarters. The Acting Assistant Center Director told the OIG he was never contacted by the Senior Special Agent or anyone else at INS Headquarters about the files. According to the Senior Special Agent, he responded to the Acting Assistant Center Director by e-mail and instructed him to fax copies of the files to INS Headquarters, and that based on this

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<sup>101</sup> The TSC Enforcement Operations Division is different from the Headquarters Enforcement Division. The TSC Enforcement Operations Division reports to the TSC Center Director, who reports to the Immigration Services Division in INS Headquarters, not to the Enforcement Division in INS Headquarters.

instruction, the Acting Assistant Center Director faxed copies of the files to INS Headquarters on September 12, 2001.<sup>102</sup> Shortly thereafter, the Senior Special Agent faxed the documents to FBI Headquarters.

On September 24, 2001, the FBI's Dallas Division asked the TSC for the original files on Atta and Alshehhi. A Dallas Division Special Agent told the OIG that on that same day he was assigned a lead that had originated from the FBI's Norfolk Division instructing the Dallas Division to go to the TSC and "obtain all information" relating to Alshehhi and Atta.<sup>103</sup> The FBI agent told the OIG that he went to the TSC and contacted the IRS who had been the Acting Assistant Center Director, who signed over to the FBI both Alshehhi's and Atta's original receipt files.<sup>104</sup> On September 25, 2001, the FBI agent forwarded by facsimile to Norfolk and other FBI offices copies of the documents obtained at the TSC. In the cover memorandum, the FBI agent summarized his original task as being to "retrieve the original INS files at the Texas Service Center, Mesquite, Texas, regarding [Atta and Alshehhi]."

The Acting Assistant Center Director and the other IRSs interviewed by the OIG stated that they did not discuss the I-20s or whether there was any additional information related to the files. They said that they were concerned with preserving the files in the event that they contained forensic evidence that could be used in the terrorist investigation that was being led by the FBI. The receipt files contained the I-539 applications and supporting documentation. They did not contain the I-20s because by this time, the student copies of the I-20s had been returned to Atta and Alshehhi and the school copies of the I-20s were on their way to ACS for processing.

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<sup>102</sup> Both the Acting Assistant Center Director and the Senior Special Agent told the OIG that they no longer had any e-mail messages related to this issue.

<sup>103</sup> The lead was sent to the Dallas Division by electronic communication dated September 13, 2001, and indicated that a search warrant of a commercial post box maintained by Atta and Alshehhi revealed information that had come from the TSC.

<sup>104</sup> TSC personnel told the OIG that, although it was unclear why, the TSC kept a copy of the Atta file but did not keep a copy of the Alshehhi file.

## **2. Actions taken by TSC and INS Headquarters managers**

On the morning of September 11, the INS Associate Commissioner for Service Center Operations, Fujie Ohata, traveled on a plane with the new TSC Director, Evelyn Upchurch, who was scheduled to report to the TSC on September 11. Ohata told the OIG that she believes that she was informed by Ortiz about the fact that the TSC had identified the Atta and Alshehhi files and that the TSC was retaining the files until they were requested by the FBI. The INS Deputy Executive Associate Commissioner for Immigration Services Division, William Yates, told the OIG that he knew very soon after September 11 that the TSC had the Atta and Alshehhi files, although he could not recall how he became aware of this. According to Bradford, Ortiz, Ohata, and Yates, they all sought to ensure that the files were properly maintained and that the appropriate personnel knew to provide the files to the FBI. They all told the OIG that they did not inquire further, however, about the status of the I-20s or whether all records related to the files had been located and provided to the FBI.

The OIG also sought to determine whether anyone in the service center management, whether in Texas or in Washington, D.C., sought to review the files or have the files reviewed to determine if the cases had been adjudicated properly. The OIG asked the Acting TSC Director at the time, Ortiz, whether he discussed the disposition of the files at any meetings with other TSC managers, and he said that he had not. He said that he considered the files to be part of an investigation and that information about the files should be kept “confidential.” Other TSC personnel told the OIG that they heard “rumors” and “gossip” that the TSC had the Atta and Alshehhi files, but they were not officially informed of this fact. We also asked the Assistant Center Directors for Adjudications, including the ACD who had responsibility for I-539 applications and who was an experienced I-539 adjudicator, whether they were ever asked to review the files to determine if the adjudications had been handled properly, and they all said that they either had not been asked or did not know about the files. INS Headquarters managers also told the OIG that they did not discuss the files further once they were assured that the files were being maintained properly.

### **3. Reasons TSC and Immigration Services Division personnel did not stop the I-20s before they were mailed to Huffman Aviation**

None of the TSC employees involved with handling the Atta and Alshehhi files, none of the TSC managers, and none of the managers at INS Headquarters responsible for oversight of the service centers inquired about the location of the school copy of the I-20s associated with Atta's or Alshehhi's file. All the employees we interviewed indicated that they did not think about the I-20s. They provided a number of different reasons for not doing so, which we discuss below. Most troubling to us was the fact that none of the managers we interviewed was aware of the contractor's duties or requirements with respect to processing the I-20s. While all the managers told the OIG that they were aware that the I-20s were sent to a contractor in another state, they stated they did not know anything about the contractor's process for the I-20s, including that the contractor stored the I-20s for six months before returning them to the school.

#### **a. TSC personnel**

The TSC Enforcement Operations Division personnel whom we interviewed told the OIG that once they retrieved the files from the Mesquite facility, their primary focus was on making sure that the files were handled in such a way that any forensic evidence would be preserved. They said that they did what they understood was their duty, to notify INS Headquarters about the files and to wait for further instructions. The Acting Assistant Center Director at the time said that he was disappointed not to receive further instructions from the Enforcement Division at INS Headquarters, but that he made no further contact with INS Headquarters about the files.

The Assistant Center Director for Enforcement Operations, Gary Bradford, told the OIG that he saw no need to discuss the files further or conduct any further investigation based on the Enforcement Operations Division's assessment that the paperwork appeared to have been properly filed and adjudicated. He also said that within a day or so of September 11, the Enforcement Operations Divisions at all the service centers staffed their offices 24 hours per day and 7 seven days per week to respond to requests for information and other needs of the INS and the FBI. He said that because of all the activity centered around the investigation following the events of

September 11, Atta's and Alshehhi's files receded in importance and were no longer a concern once the FBI had retrieved them.

All the Enforcement Operations Division employees we interviewed stated that even if they had considered the I-20s, they would have believed that the I-20s were already at Huffman Aviation and had been accounted for by the FBI. They indicated that since they all knew that the cases had been adjudicated months earlier and since none of them were aware of the contractor's processing requirements, they would have believed that the I-20s had long since been processed by the contractor.

Ortiz, the Acting TSC Service Center Director in mid-September 2001, told the OIG that he was made aware of Atta's and Alshehhi's files and that once he was confident that they were being handled appropriately, there was nothing else to do with respect to the files. He said that since he considered the files to be part of the FBI's investigation and the terrorists were dead, he did not see any reason to discuss the files with the TSC's Assistant Center Directors to determine whether the cases had been properly adjudicated. In addition, he said that his focus was on the safety of the two TSC buildings because of fears of further attacks and several bomb threats that resulted in evacuations in the days following September 11. He told the OIG that he was not aware of the contracting requirements with respect to the I-20s; he only knew that they were processed by a private company in Kentucky.

#### **b. Immigration Services Division managers**

Fujie Ohata, the Associate Commissioner for Service Center Operations, landed on a plane in Dallas, Texas, the morning of September 11 because she was escorting the new TSC Director to her post. Ohata told the OIG that she learned about the files of Atta and Alshehhi the next day from Ortiz. Ohata said that she recalled telling Ortiz to make sure that the appropriate law enforcement agencies had what they needed. Ohata said that she felt comfortable that the files were being dealt with appropriately, which was her concern. She said that in the aftermath of the events of September 11, she was dealing with a number of issues with respect to service center employees throughout the country who, like her, were stranded away from their duty stations. She also said that she was ensuring that all of the service centers were up and running.

Ohata said that she returned to Washington on Thursday, September 13, and that she recalls having a limited conversation with Yates about the fact that

at least one of the suspected terrorists had been granted benefits by the INS through the TSC. She said that she informed Yates, her supervisor, that the TSC had located the file and was in the process of transferring it to the FBI. Ohata told the OIG that she did not recall any meetings at INS Headquarters about the files or any discussion about determining whether the files had been properly adjudicated. She said that she was not asked to do anything else with respect to the files, nor did she ask anyone to do anything else with respect to the files.

Ohata told the OIG that she was not aware of anything in the contract between INS and the contractor regarding the I-20s and a storage requirement of 180 days. She said that she learned only recently about this arrangement from INS briefings to the media.

Yates, the Deputy Executive Associate Commissioner for and the person in charge of the Immigration Services Division, told the OIG that he was not sure how he was made aware of the terrorists' files in the TSC but that he recalled getting telephone calls from the field about this matter. He suggested that since he was aware that the files were being maintained appropriately for law enforcement purposes, there was nothing else to do with respect to these files, and he did not give any further instructions about them.

He said that in the aftermath of September 11, he took his direction from then-Executive Assistant Commissioner for Field Operations Michael Pearson, who immediately established a "Command Center" at INS Headquarters for coordinating information. According to Yates, his first instructions from Pearson were to set up the service centers' Enforcement Operations Divisions to operate around the clock, seven days per week. Yates said that his office was also asked, based upon a request from the White House, to compile a list of the dates, times and locations of naturalization ceremonies all over the United States, which he said he believed arose because Bush Administration officials were planning to attend naturalization ceremonies as a means to demonstrate support for immigrants after the September 11 attacks. According to Yates, this directive generated an enormous amount of work.

Yates told the OIG that he was aware that significant numbers of requests were made throughout the INS for original A-files and receipt files and that these files were provided to the particular law enforcement official or entity that requested the file. However, Yates said that he never received any instruction to collect all INS files or records with respect to the terrorists once they had been identified, nor did he ever issue such an order on his own

initiative. According to Yates, with respect to the pulling together all of the files, he and other Immigration Services Division personnel took their instructions from law enforcement personnel, since the files were related to an FBI investigation.

With respect to the processing of I-20s, Yates said that he was not aware of the contractor's process for handling I-20s and stated specifically that he was not aware that the contractor stored the I-20s for 180 days after processing them. He also stated that to his knowledge no one within the Immigration Services Division was aware that the contractor stored the I-20s for 180 days. Yates told the OIG that prior to the events of September 11, responsibility for the I-539 "product line" had never been assigned to a particular manager in the Immigration Services Division.<sup>105</sup> Yates suggested that no one in the Immigration Services Division had any information about the processing of the I-20s because the contract was not managed out of the Immigration Services Division. He told the OIG that it was his understanding that the contract governing the processing of the I-20s and other INS forms was managed by the Inspections Division within the Office of Field Operations.<sup>106</sup>

#### **4. OIG analysis**

No one in the TSC or the Immigration Services Division was specifically asked to provide every document or record relating to Atta and Alshehhi or was asked specifically to locate the I-20s associated with their files. Although the lead provided to the FBI Dallas Special Agent stated "all information" should be gathered, the FBI agent's understanding was that he was going to the TSC to "retrieve the original INS files [of Atta and Alshehhi]." He told the OIG that he did not believe that he asked for every document associated with

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<sup>105</sup> Yates said that since the events of September 11, an INS employee who has been working on various standard operating procedures was directed to expedite the completion of the national SOPs for I-20s.

<sup>106</sup> According to Yates, when news of Atta and Alshehhi's I-20s first appeared in the media, most managers from INS Headquarters were in San Francisco, California, for a Commissioner's Conference. He said that he discussed the issue of the contract and was told that it was an Inspections Division contract. In fact, the contract with ACS has been managed by the Inspections Division only since October 2001. Prior to that time, the Office of Information Resource Management was responsible for the contract.

Atta and Alshehhi and that there was no discussion about whether he was being given the entire file. He said that the Acting Assistant Center Director told him that he had the files and that the Enforcement Operations Division had checked the names through all of the INS's computer systems.

No one involved with the Atta and Alshehhi files in the TSC Enforcement Operations Division attempted to retrieve the I-20s or otherwise conducted any research about their location. We also found that neither the managers at the TSC nor in the Immigration Services Division issued any instructions about the Atta and Alshehhi files or specifically instructed anyone to locate the I-20s. Due to the commendable initiative of two TSC IRSs, the files of Atta and Alshehhi were identified and retrieved from the Mesquite facility within 24 hours of the attacks of September 11. In the days following September 11, the focus of both TSC personnel and managers and Immigration Services Division managers once they were aware of the files was that the appropriate steps be taken to provide the files to the FBI. Once TSC and Immigration Services Division managers were confident that the files had been handled appropriately, the managers considered the issue resolved and moved on to other matters.

We recognize that the events of September 11 created overwhelming demands on all law enforcement agencies, including the INS. Within several hours of the destruction, however, the TSC had identified an important link between the TSC and the terrorists involved in the attack. In our view, it was the responsibility of the TSC managers and their supervisors in the Immigration Services Division to manage their piece of this significant event in a thorough manner. Although the FBI may not have asked specifically for the I-20s or even "all files relating to Atta and Alshehhi," we believe that INS managers should have taken the initiative to ensure that the FBI was either provided with all immigration records relating to the terrorists, including the I-20s, or at least notified of the existence of the documents. The evidence shows that they did not.

We believe that TSC Enforcement Operations Division personnel bear some responsibility for failing to consider whether to retrieve the Atta and Alshehhi I-20s before they were mailed to Huffman Aviation. The Enforcement Operations personnel who located the files certainly deserve credit for their initiative in locating the Atta and Alshehhi files. Nonetheless, since they and their managers serve in an investigative function and were aware that the I-20 form was one of the documents used in the change of status

adjudication process, they should have at least inquired as to the status of Atta's and Alshehhi's I-20s, even if they believed that they were already sent to the school. All TSC Enforcement Operations Division personnel we interviewed told the OIG that they wanted to preserve the original files for forensic evidence. But despite the fact that the I-20 is supposed to contain original signatures, none of the Enforcement Operations Division personnel inquired about or took any action to retrieve the I-20s. Moreover, if the Acting Assistant Center Director at the time and Bradford thought that the I-20s were already at Huffman Aviation and therefore beyond their reach, they should have brought this to the attention of the FBI agent who retrieved the Atta and Alshehhi files.

We believe that the Immigration Services Division managers – Yates and Ohata – as well as the TSC manager at the time, Ortiz – bear even more responsibility than the TSC Enforcement Operations Division personnel for failing to take action with respect to the I-20s. Yates, Ohata, and Ortiz told the OIG that their main concern was ensuring that the FBI had the information that it needed. At the same time, all three acknowledged that they were aware that the I-20 was part of the change of status adjudication process for students. To ensure that the FBI or other law enforcement agency were aware of all documents and information associated with the terrorists, they should have at least inquired about the status of the I-20s or directed that INS personnel take steps to make sure that all parts of the file and records had been collected, including the I-20s. While we recognize that the days following September 11 were extraordinary, had this type of analysis occurred any time between September 11 and March 2002, the I-20s could have been identified, located, and offered to the FBI.

As the person in charge of the Immigration Services Division, Yates had the greatest responsibility to consider the broader implications of INS's dealings with Atta and Alshehhi. Although Yates told the OIG that he was taking direction from Executive Associate Commissioner for Field Operations Pearson in the aftermath of September 11, we believe that it was Yates' responsibility to recognize that the INS needed to identify all of its documents and records regarding the terrorists and to ensure that appropriate steps were taken to make the FBI aware of these documents. If Yates believed that it was

not his place to take the initiative to address the issue, he should have at least raised it with Pearson.<sup>107</sup>

More troubling than the disposition of these two particular I-20s, however, is the fact that no one in the Immigration Services Division or the TSC to whom we spoke was aware of the processing requirements of the school copy of the I-20 form. This information is important for several reasons. Service centers sometimes need to retrieve an I-20 from ACS. The INS's contract allows the INS to request a certain number of records from ACS annually. Service center employees, particularly Enforcement Operations Division employees who would likely be making the requests as part of an investigation, should have been aware of this information and the procedure for making the requests. They should also have been aware of any storage requirements for the I-20 in order to determine the likelihood that the I-20 would even be in the ACS facility. In addition, schools and applicants often call the INS to inquire about the status of their applications and forms. As part of their responsibility to be knowledgeable and informed when responding to inquiries from the public, service center employees should know what happens to the I-20 once it leaves the INS. The fact that no one did reflects a troubling lack of management and attention to detail.

### **C. Actions of INS Headquarters Enforcement Division personnel**

In addition to the failings of TSC and ISD personnel, we evaluated the actions of INS Headquarters Enforcement Division personnel with regard to the I-20s that were mailed to Huffman Aviation. Our analysis of their actions is described in this section.

#### **1. Organization of Enforcement Division**

The Enforcement Division falls under the Office of Field Operations. In September 2001, the Executive Associate Commissioner for Field Operations, Michael Pearson, was responsible for the three regional directors, the Border Patrol, the Office of International Affairs, and three large divisions – Enforcement, Immigration Services, and Detention and Removal, each of which is headed by a Deputy Executive Associate Commissioner. The

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<sup>107</sup> We discuss Pearson's actions in the next section of this chapter.

Enforcement Division was headed by the Deputy Executive Associate Commissioner for Enforcement, who at that time supervised three assistant commissioners, one for investigations, inspections, and intelligence. The Acting Assistant Commissioner for Investigations supervised four branch chiefs, each of whom was responsible for a different substantive area within the investigative arena.

Of the four branches, the National Security Unit (NSU) was most directly involved in the investigation that arose out of the events of September 11. The NSU is headed by Walter “Dan” Cadman. Around September 2001, it was comprised of several Senior Special Agents, three of who were working in the FBI’s Counterterrorism Division. One of the Senior Special Agents has responsibility for the INS agents who participate in the Joint Terrorism Task Force with other law enforcement agencies.

## **2. Events at INS Headquarters on and around September 11**

Enforcement Division personnel described to us the chaotic conditions at INS Headquarters and the many assignments they were working in the immediate aftermath of the September attacks. On the morning of September 11, Pearson activated the Operations Center at Headquarters, an emergency crisis center that had not previously been used. Pearson said that he also directed all INS enforcement branches to operate at Threat Level One. Ports of entry were reinforced with additional manpower. Pearson directed that a 24-hour command center be established at each regional office.

The FBI activated its Special Incidents Operations Command (SIOC) in response to the attacks of September 11, and three INS agents working in FBI Headquarters formed the core of an INS desk that served as a full-time INS point of contact for the FBI agents and support personnel who were working in the SIOC at any given time. The flow of information between the INS field agents and the FBI passed through the INS’s NSU.

The INS Operations Center’s initial focus was to check the list of passengers on the four hijacked planes through INS computer systems. The NSU also supported the FBI’s investigation, and a team of INS agents assisted in conducting reviews of the several hundred aliens arrested during the investigation. With respect to the lists of suspected terrorists or “watch lists,” the NSU provided information to the INS’s Inspections Division to make sure that suspected terrorists did not leave the country. The INS updated information about the suspected terrorists as the information became known.

In the INS's Intelligence Division, personnel began immediately to assemble data about the suspected terrorists once the passenger lists had been obtained. They began working on a detailed timeline that would reflect and analyze the movements of the terrorists as well as identify associations among them. In addition, suspected terrorist lists containing as many as 6,000 names were disseminated, and efforts were made to identify information the INS had with respect to persons on the list and to determine if the information was accurate.

### **3. Enforcement Division requests for information and the handling of Atta's and Alshehhi's files**

The Enforcement Division personnel interviewed by the OIG told us that there was no request or instruction from the Enforcement Division to assemble all files, records, or documents related to the 19 terrorists or to any terrorist in particular.<sup>108</sup> In addition, Enforcement Division personnel, in particular the three INS agents who worked with the FBI and served as the FBI's point of contact with the INS, stated that they were not aware of any request from the FBI for the INS to assemble all INS files, records, or documents with respect to the terrorists.

As discussed previously, TSC personnel located and retrieved the Atta and Alshehhi files on September 12, and the Acting Assistant Center Director from the TSC's Enforcement Operations Division, e-mailed a Senior Special Agent at INS Headquarters about the files. According to the Acting Assistant Center Director, he e-mailed this Senior Special Agent because he was the service centers' point of contact within the Enforcement Division. This Senior Special Agent worked in the Fraud Section, and his usual duties included, among other things, approving agents working undercover in fraud cases. The Senior Special Agent said that he did not have managerial responsibility for the Enforcement Operations Divisions in the service centers and did not typically have contact with them. The Senior Special Agent said that, although he normally worked in the Fraud Section, on September 11 he was doing what was needed in the NSU.

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<sup>108</sup> Pearson told the OIG that only after the I-20s of Atta and Alshehhi appeared in the newspaper in March 2002 did he issue a specific order that all field offices be searched for any additional documents related to Atta and Alshehhi as well as the 17 other terrorists.

The Senior Special Agent told the OIG that he recalled receiving an e-mail from the TSC about files that the TSC had located concerning the terrorists. He said that he recalled e-mailing the Acting Assistant Center Director back and directing him to fax the documentation to him at INS Headquarters. The Senior Special Agent said that once he received the fax from the TSC, he faxed the documents to the FBI, where the documents would have been routed to one of the INS agents working in the FBI's SIOC at the time. The Senior Special Agent said that he did not call or follow up with the TSC about Atta's or Alshehhi's documents. The Senior Special Agent said that he was not asked to conduct any further follow up about the documents that he faxed to the FBI.

#### **4. Reasons stated by Enforcement personnel for not asking for all INS records or files related to the terrorists**

The Enforcement Division personnel we interviewed consistently stated that in the initial wake of the events of September 11, their emphasis was on obtaining *information*, not documents, files, or paper, about the identities of the terrorists and on identifying any imminent additional attacks. Enforcement personnel stated that after identifying the terrorists and ensuring that no additional threats were forthcoming, the emphasis turned to managing the information related to the suspected terrorists lists and the arrests of several hundred aliens for immigration violations. Cadman, the director of the NSU, as well as other Enforcement Division personnel also stated that the investigation with respect to the attacks of September 11 was within the jurisdiction of the FBI, and that the NSU's role was to coordinate the FBI's requests for information from the INS and the responses from the field. Enforcement personnel also told the OIG that the NSU assessed information that was generated in the field and sent to the Enforcement Division mainly in the form of Special Incident Reports to determine what might be of value to the FBI.

We asked each person from the Enforcement Division we interviewed why, once it became known that the INS had granted student status to Atta and Alshehhi, efforts were not made to obtain the I-20s related to the change of status applications. They told us that they did not consider the I-20s or discuss whether they should be obtained. Looking back on their actions, they said they were not attempting to build a case against the terrorists, since they were dead, and that all necessary information concerning addresses, schools attended, and entries into the country was being obtained from INS databases. They stated

that if there had been some question as to the identity of the terrorists or some other investigative need that was not being met by the information available, they would have made additional efforts to track down all available information. They acknowledged, however, that they made no reasoned decision not to obtain the I-20s; rather, they had not considered the issue at the time. Across the board, the Enforcement personnel stated that even if there had been a need for the information in the files or in the I-20, they were not aware of the processing requirements for I-20s. While most of the persons interviewed said that they were aware that I-20s were associated with change of status applications for persons requesting to become students, they stated that they were not aware of any of the processing steps taken to return the I-20s to the schools.

With respect to the Atta and Alshehhi files received by the Senior Special Agent in INS Headquarters, he stated that he was not aware at the time that I-20s were processed by a contractor and that it was his understanding that the I-20 was sent to the school once the case was adjudicated. He said that at the time, the information contained in the I-20s, such as name, address, and passport number, was more important than the actual files. He added that he believed his role was to act as a conduit of information to the FBI.

We interviewed each of the three INS agents who were working at FBI Headquarters at the time and asked what they thought their role was with respect to incoming information from the INS. One of the INS agents said that he was primarily involved with operational matters such as preparing for briefings rather than dealing with incoming information. The other two agents told the OIG that as they received information from the INS, they would fill out the proper FBI cover sheet for the information and forward it to the appropriate desk in the SIOC for data entry into the FBI's database. They suggested that it was not part of their responsibility to assess the value or purpose of the incoming information.

## **5. OIG analysis**

No one in the INS's Enforcement Division issued any instruction to obtain all documents, records, or files related to the terrorists involved with the attacks on September 11. Nor did anyone within the Enforcement Division issue any instruction with respect to the particular files of Atta and Alshehhi or the associated I-20s, once it became known that the INS had adjudicated their change of status applications. Enforcement efforts at INS Headquarters

focused on the interruption of any additional terrorist activity and the arrest of any potential terrorist conspirator. There was no emphasis on the collection of documents.

Several other reasons contributed to the Enforcement Division not retrieving the I-20s related to the Atta and Alshehhi files. Many of the personnel we interviewed described INS Headquarters as “chaotic” in the immediate aftermath of September 11. In addition, in the days that followed the attacks of September 11, the INS was inundated with specific requests for information. Approximately thirty INS detailees were used to staff both the NSU and the INS desks at the FBI SIOC. Across the country, up to half of all INS agents were assigned duties with the FBI. At both the INS service centers and the off-site contractor locations, personnel were working 24 hours a day, seven days a week, to retrieve, assemble, and forward requested data and files.

Although the INS was attempting to obtain a cumulative base of information regarding the terrorists, their efforts were hindered by the fact that there existed no infrastructure to manage investigative leads and findings. Likewise, there was no systematic means of coordinating either the retrieval or the distribution of known information. This led to inefficiency and work duplication, with individual employees repeatedly querying and forwarding the same information again to different recipients at different times. Also, because many of the INS’s databases did not communicate with one another, a multitude of computer queries was required to gather all of the known information on any particular alien.

However, as with our analysis of the actions of personnel from the Immigration Services Division and the Texas Service Center, we believe that this does not excuse the Enforcement Division personnel’s failure to consider whether all documents regarding Atta’s and Alshehhi’s change of status applications, including the I-20s, had been provided to the FBI. We believe that the managers of the Enforcement Division, in particular Pearson as the Executive Associate Commissioner of Field Operations, and to a lesser extent, Cadman as the head of the NSU, bear some responsibility for failing to ensure that the I-20s associated with the files of Atta and Alshehhi were, at a minimum, identified for the FBI. Although we recognize that the FBI had primary jurisdiction over the investigation of the terrorists acts committed on September 11, the fact that all 19 terrorists were aliens who had contacts with the INS created a greater responsibility for the INS to ensure that it was making the FBI aware of all of its records associated with the terrorists. While we

acknowledge that the aftermath of September 11 was extraordinary and that the immediate need of the investigative effort was for information not documents, at some point after the immediate crisis of September 11<sup>th</sup> had subsided it was incumbent upon the managers in the Enforcement Division to assess whether all available files and other records had been provided to the FBI. We believe that the direction to conduct such an analysis should have come from Pearson. We also believe Cadman, as the manager of the unit responsible for providing information to the FBI, should also have recognized the need for such action and at least raised the matter to his supervisors.

Unfortunately, no one in the INS – either in INS Headquarters in the Enforcement Division or the Immigration Services Division, or in the TSC – ensured that the FBI was aware of all INS documents related to Atta, Alshehhi, or the other terrorists. Most important, no one thought to inquire about the I-20s related to Atta’s and Alshehhi’s change of status applications or to find out where those I-20s were. This, in our view, was a failure on the part of many individuals in the INS.

### **III. The INS’s Response to OIG Criticism**

The OIG provided officials from the INS’s Commissioner’s Office with the opportunity to review this report prior to its release. In addition, Yates, Ohata, Cadman, Pearson, Ortiz, Bradford, and the former Acting Assistant Center Director for the Enforcement Operations Division at the TSC reviewed Chapter Five. All were permitted to provide comments in response to the report.

INS Commissioner James Ziglar wrote in his response that the INS’s failure to stop the delivery of Atta’s and Alshehhi’s I-20s was “inexcusable” and said “[t]he INS does not hesitate to acknowledge this shortcoming.” Other INS officials called the INS’s inaction “regrettable” and “an embarrassment.” Nonetheless, the reviewing officials offered many reasons why they believed INS officials should not be criticized for failing to provide the I-20s to the FBI. They asserted that because the investigation was under the jurisdiction of the FBI and because the FBI never asked the INS for the I-20s, the INS had no responsibility to provide the I-20s to the FBI. Several of them also implied that their responsibility is diminished by the fact that the I-20s were not necessary to the FBI’s investigation. In addition, some reviewing officials argued that if INS had failed, it was the fault of others, not themselves.

We do not find the reviewing officials' comments persuasive. Atta's and Alshehhi's I-20s continued to be processed after September 11, 2001, because none of the managers we discuss in this chapter ever considered the I-20s or took the appropriate managerial steps to ensure that their subordinates did. Although the FBI had primary jurisdiction over the investigation, INS employees were the only ones who were knowledgeable about the change of status process and therefore they had an obligation to bring the existence of these documents to the attention of the FBI. The FBI was not in a position to ask for specific documents it did not know existed.

We agree that the absence of the I-20s did not ultimately hinder the FBI's investigation. While the fact that the I-20s turned out not to be of significant investigative value is fortuitous, it is irrelevant to the question of whether the INS should have thought about them and made the FBI aware of them. In addition, it was clear from our interviews that the failure to alert the FBI to the I-20s was not the result of a reasoned decision that the I-20s had no investigative value. Rather, INS personnel all acknowledged that they never thought about the I-20s. We believe this was an unjustified failure on their part.

## **CHAPTER SIX**

### **THE INS'S FOREIGN STUDENT PROGRAM**

#### **I. Introduction**

In this chapter, we discuss broader issues regarding the process by which foreign students gain admission to the United States and how the INS tracks and monitors them once they enter the United States. Our evaluation goes beyond the circumstances regarding Atta and Alshehhi. In this part of our review, which we began in November 2001 in response to our concerns about the tracking of foreign students that the events of September 11 highlighted, we focused on the INS's processes for admitting foreign students and for certifying schools as eligible to receive foreign students. We also evaluated the INS computer tracking systems for foreign students – the system that exists now as well as the system the INS is currently developing, the Student and Exchange Visitor Information System (SEVIS). We describe the deficiencies we observed in the INS foreign student program, the history and development of SEVIS, the problems in the foreign student program that SEVIS is designed to address, the deficiencies in the program that SEVIS will not address, and the implementation difficulties for SEVIS.

#### **II. Background**

The State Department is responsible for issuing student visas to foreign students who want to study in the United States. It is the responsibility of the INS, however, to determine which schools are entitled to accept foreign students, to inspect the documentation of persons arriving with student visas, to keep track of the entries and exits of foreign students, to know whether students are continuing to maintain their status, to facilitate the removal of students once their status ends, and to approve appropriate requests by nonimmigrants who are in the country through some other classification to acquire student status. Responsibility for each of these obligations is divided among several different offices, divisions, and branches within the INS, as well as among private contractors.

The INS's foreign student program has historically been dysfunctional. The INS has acknowledged for several years that it does not know how many foreign students there are in the United States. The INS's foreign student program came under increased scrutiny after the February 1993 bombing of the World Trade Center when it became known that one of the terrorists was in the

United States on an expired student visa. In April 1995, the Deputy Attorney General asked the INS to address a departmental finding that the INS needed to subject foreign students to thorough and continuing scrutiny, both prior to and during their stay in the United States. In September 1996, Congress also directed the Attorney General to develop and conduct a program to collect certain information on nonimmigrant foreign students and exchange visitors from approved institutions of higher education and designated exchange visitor programs.<sup>109</sup> In response to these directives and legislation, the INS plans to implement a new computer system, SEVIS, which is designed to collect information on full-time students and exchange visitors and their dependents.

### **A. Scope and methodology of review**

In conducting this part of our review, we interviewed various INS Headquarters officials regarding current policies and procedures and SEVIS implementation, including officials from the INS's Office of Adjudications (formerly located within the Office of Programs), the Investigations and Inspections Divisions (within the Office of Field Operations), the Office of Information Resources Management (within the Office of Management), and the INS group titled "Strategic Information and Technology Development," which is responsible for coordinating between the policy groups and the technical groups in the INS. In the field, we interviewed intelligence research specialists assigned to the Enforcement Operations Divisions at the Texas and California Service Centers to obtain information on program fraud. We also interviewed the private consultant involved in developing SEVIS, the SEVIS liaison with the FBI, and representatives from the Department of State and the Department of Education. To obtain the schools' perspectives on SEVIS, we

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<sup>109</sup> Foreign participants enrolled in State Department-approved educational and cultural exchange programs must first obtain a J-1 visa to enter the United States. There are approximately 1,500 program sponsors, including universities, summer camps, hospitals, and private foundations. There are 13 program categories, including summer work/travel, high school students, trainees, au pairs, short-term scholars, professors and research scholars, college and university students, teachers, specialists, alien physicians, international visitors, professors, and camp counselors. During fiscal year 2001, the State Department issued 299,959 "J" visas. Although the exchange visitor program operates similarly to the foreign student program, the primary difference is that the State Department, not the INS, is responsible for approving and monitoring the sponsors of exchange visitor programs.

interviewed officials from several organizations that represent schools, specifically the Association of International Educators, the American Council on Education, and the College Career Association.

During January and February 2002, we visited four INS district offices (Atlanta, New York, Chicago, and San Francisco) and the associated international airports (Atlanta Hartsfield, John F. Kennedy, O'Hare, and San Francisco). At these locations we interviewed INS adjudicators, investigators, intelligence officers, and inspectors. At each location, we also reviewed the files of 50 vocational, language, and flight schools, randomly selected from the INS's database of approved schools, for compliance with INS regulations.<sup>110</sup> We also attempted to determine whether these schools were still active by searching through various Internet web sites, including sites maintained by accreditation organizations and federal and state educational approval agencies.

## **B. Statistics on student visas**

The number of foreign students enrolled in United States schools has been steadily increasing over the years. During the 2000-2001 school year, 547,867 foreign students were enrolled in colleges and universities in the United States. This represents an increase of 6.4 percent over the prior year, the largest increase since 1980. Foreign students and exchange visitors, however, account for a relatively small percentage of the total number of foreigners who visit the United States, which in fiscal year 2001 totaled approximately 232 million.

During fiscal year 2001, the State Department issued 319,518 F visas to students and their dependents for the purpose of attending academic or language courses, and 5,658 M visas to students and their dependents for the purpose of attending vocational or other nonacademic courses. During fiscal year 2000, 308,944 F visas were issued and 6,465 M visas were issued. During fiscal year 2001, the statuses of 28,880 aliens were adjusted to that of a student status. Of these, 27,848 adjusted their status to that of an academic or language student (F) and 1,032 adjusted their status to that of a vocational student (M). The primary original visa designations were for business (B-1), pleasure (B-2),

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<sup>110</sup> We focused on these types of schools because, according to INS officials, they are apt to be less stable and present a higher risk for fraud.

or inter-company transfers (L-1). For fiscal year 2000, more than half of the F visas were issued to citizens of Japan, South Korea, China, India, and Taiwan. During this same period more than half of the M visas were issued to citizens of Japan, Germany, the United Kingdom, Saudi Arabia, and Italy.

### **C. The student visa application process**

An alien wanting to pursue full-time academic or vocational studies in the United States first applies to a school that has been approved by the INS as eligible to receive foreign students. After the student is accepted at the school, the school fills out and sends to the student both the student copy and the school copy of the I-20.

The alien must then apply for a student visa at the nearest overseas United States consulate. The alien must present to the consular officer a current passport and photograph, both the student copy and the school copy of the I-20 for the school that the applicant plans on attending, and documentation to show that the applicant has the financial resources to pay for tuition and living expenses. The State Department's Consular Lookout and Support System (CLASS) is queried to identify whether any negative information exists on the alien. The consular officer reviews the paperwork and, if necessary, conducts an in-person interview.<sup>111</sup> If approved, the consular office will issue a visa to the applicant that indicates the school that the student will be attending.<sup>112</sup>

Upon entering the United States, aliens present to the INS immigration inspector their passport containing the student visa, both the student copy and

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<sup>111</sup> The State Department determines on a country-by-country basis when interviews are required. Applicants are informed of the criteria that must be met in order to complete the process without an interview. In some countries, interviews are required in almost all cases. In all instances, consular officers can in their discretion require an interview if the application appears questionable or if information in CLASS indicates that follow up is needed.

<sup>112</sup> Student visas are foil stickers that are placed in the appropriate page in an alien's passport. Unlike the B-1/B-2 visa, the student visa does not have a period of validity. The length of stay is determined by the immigration inspector at the POE and is written on the school copy and the student copy of the I-20.

school copy of the I-20, and the I-94 (Arrival-Departure Record).<sup>113</sup> The immigration inspector reviews the I-20, checks to see if the passport contains the appropriate visa, and writes the I-94 admissions number on both copies of the I-20. The immigration inspector also determines the length of stay from the I-20 and records either “duration of status” if the student has an F visa or the dates for which the student is being admitted if the student has an M visa. The immigration inspector then separates the student copy and the school copy of the I-20, giving the student copy to the alien and keeping the school copy. The INS transmits the school copy of the I-20 to ACS, where it is data entered and eventually uploaded to STSC.<sup>114</sup>

Foreign students are permitted to leave the United States and return after a temporary absence. The regulations provide that to re-enter the country, the alien must be in possession of the I-20, and the second page must be properly endorsed with the signature of the designated school official (DSO) who certifies that the student is leaving temporarily but will be returning to school. Sometimes a foreign student will arrive at the port of entry with a missing or incomplete I-20. If, in the judgment of the INS immigration inspector, the student is otherwise admissible and no bad faith was involved, an alien may still be admitted even if the alien is missing the I-20 or has an incomplete I-20. In this circumstance, the inspector must complete INS form I-515, which requires the student to obtain the appropriate I-20 form or the proper signature on the form and to return to the INS with the documentation within 30 days.

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<sup>113</sup> An alien who wants to enter the United States as an exchange visitor must be accepted to an approved exchange visitor program. Once an alien is accepted to an approved exchange visitor program, the sponsor provides the alien with a Form DS-2019 (Certificate of Eligibility for Exchange Visitor Status). When applying for a visa, the alien presents the consular officer with the IAP-66 as proof of acceptance into the program. When entering the United States, the alien also presents the IAP-66 to the immigration inspector who, in a similar fashion to the I-20 form, separates the IAP-66 form, giving one copy to the alien and keeping one copy. The INS copy is sent to the Department of State, Bureau of Educational and Cultural Affairs, for data entry into its database system, EVIS (Exchange Visitor Information System).

<sup>114</sup> As noted previously in this report, the immigration inspector also stamps the I-94 with the admission information and separates the I-94 into two parts. The departure portion of the Form I-94 is given to the student; the arrival portion of the I-94 is mailed to ACS where it is data entered and eventually uploaded into NIIS.

A flowchart depicting the student visa process is on the next page.

### **III. Deficiencies in the Foreign Student Program**

In our review, we found many deficiencies in the INS's current foreign student program, which we describe in detail below. In sum, we found that because of the INS's lack of controls over the schools and students and lack of attention to this program, the foreign student program is highly susceptible to fraud, and the INS has incomplete and inaccurate data about the schools and students in the program.

#### **A. Inadequacies in the INS's process for approving schools**

Although federal regulations require that schools be certified before they can accept foreign students, the INS's review of schools consists primarily of a review of paperwork submitted by the school. We also found that INS often did not inquire further even when the paperwork raised obvious issues about the school's ability to meet the requirements for certification.

##### **1. Legal requirements for schools to be certified to accept foreign students**

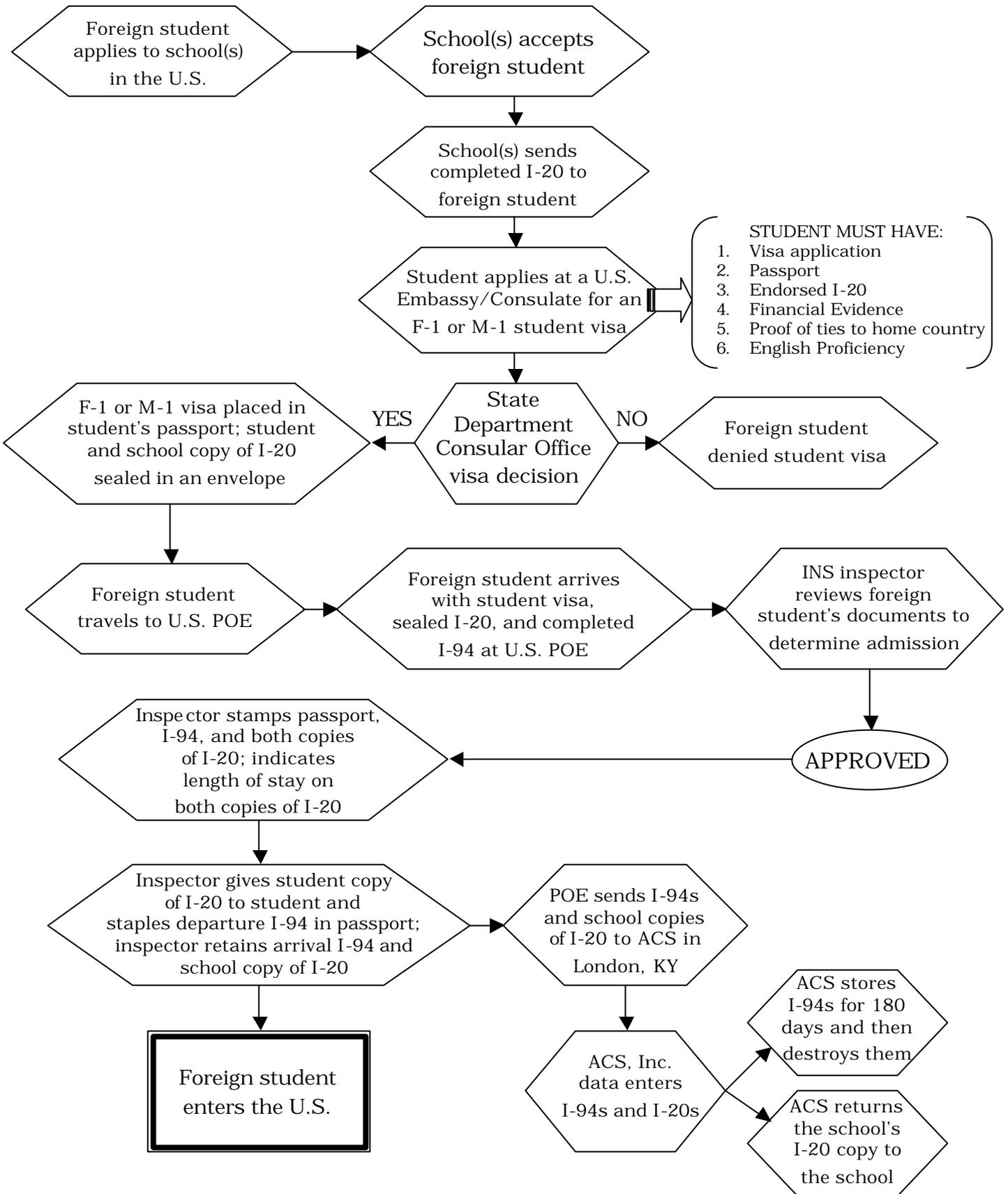
Schools may be eligible to accept academic or language students (F visa category), vocational students (M visa category), or both. According to federal regulations, to be eligible to accept foreign students, a school must establish that:

- It is a bona fide school.
- It is an established institution of learning or other recognized place of study.
- It possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses.
- It is, in fact, engaged in the instruction of students in these courses.

See 8 CFR § 214.3(e)(1).

The certification regulations do not state that the school must offer classes or instruction on a full-time basis. However, by definition under the INA, an academic student or a vocational student is one who is pursuing a "full course of study," and the regulations further define "a full course of study." For vocational students, the regulations provide that a full course of study is "at

# Student Visa Process as of July 2001



POE: Port of Entry  
 INS: Immigration and Naturalization Service  
 INS Form I-20: Certificate of Eligibility for Nonimmigrant Student  
 INS Form I-94: Arrival-Departure Record

least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or at least twenty-two clock hours a week if the dominant part of the course of study consists of shop or laboratory work.”<sup>115</sup> 8 CFR § 214.2(m)(9)(iii). Based on our interviews with INS officials and on our reading of the regulations as a whole, we concluded that a school must demonstrate that it is at least capable of offering a full course of study. The school then certifies to the INS on the I-20 with respect to each student that the student is actually enrolled in a full course of study.

With respect to vocational schools (which include flight schools) and language schools, schools must meet the following requirements to obtain INS certification:

- Be accredited, licensed, or otherwise approved by a state or federal agency.
- Submit evidence that its courses of study are accepted as fulfilling the requirements for the attainment of an education, professional or vocational objective, and are not avocational or recreational in character. As evidence that the petitioner meets a vocational or professional objective, provide letters from three employers of the petitioner’s graduates, on the employer’s letterhead, stating the name of the graduate, the school of graduation, the position in which employed, and the period of employment.
- Provide a copy of the school’s catalogue and, if not included in the catalogue, a written statement describing the size of its physical plant; nature of its facilities for study and training; educational, vocational, or professional qualifications of the teaching staff; salaries of the teachers; attendance and scholastic grading policy; amount and character of supervisory and consultative services available to students and trainees; and finances (including a certified copy of the accountant’s most recent statement of the school’s net worth, income, and expenses).

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<sup>115</sup> As discussed in other parts of this report, aliens wanting to attend school on a part-time basis can enter the United States with a B-1/B-2 visa if their school attendance is “incidental” to a primary pleasure purpose.

## **2. The I-17 petition and the INS's certification process**

In order to be permitted by law to have full-time foreign students in attendance at their schools, a university, college, or other school must be “certified” by the INS. 8 CFR § 214.3(a)(1). To become certified, a school must submit a Form I-17 (Petition for Approval of School for Attendance by Nonimmigrant Students) and supporting documentation to the local INS district office. The school must indicate on Form I-17A the names of the DSOs who will be authorized to certify the foreign students who have been accepted to the school. Schools are required to notify the INS by submitting an updated Form I-17 when there are changes in ownership, address, school term, DSO, or the type of student for which the school was initially approved.

Once the school submits the required documentation, the INS is required to conduct an interview in person and under oath of an authorized representative of the school. 8 CFR § 214.3(d). This requirement may be waived by the INS district director.

Each INS district has a designated “schools officer” who is responsible for certifying that schools meet these requirements, although the schools officer may have other responsibilities. We were informed that to certify schools, the schools officer reviews the school’s petition and supporting documentation. If the schools officer has a concern about the documentation, the schools officer can request that the school provide additional evidence in support of its petition.

Upon approval of a petition, the INS sends an approval notice to the school. In addition, the INS sends the I-17 to ACS. The school information is data entered by ACS, and this information is eventually uploaded into the INS’s STSC database.

If the schools officer denies the petition, the INS must notify the school in writing, state the reason for the denial, and inform the school of its right to an appeal.

## **3. Inadequate resources devoted to school approval process**

We found that the INS devotes minimal resources to certifying schools and, as a result, does not adequately review schools to ensure that they meet the legal requirements for approval. We also found that the INS rarely re-reviews schools to ensure that they are still active and still meet the requirements for certification.

At each of the four districts we visited, the schools officer was a collateral, low-priority duty, accounting for 5 to 20 percent of the officer's time. In the Atlanta and Chicago districts, an immigration inspector serves as the schools officer; in the New York and San Francisco districts, a district adjudicator serves as the schools officer. The immigration inspectors who performed this function spent most of their time performing inspection-related duties. The adjudicators who performed the function spent most of their time on adjudications functions that are considered "priorities" of the INS, such as naturalization applications and orphan petitions.

#### **4. Lack of in-person interviews and site visits prior to approval**

In addition, despite the regulatory requirement that the INS interview in person and under oath an authorized representative from the school prior to approving the petition, we found that this requirement seemed to be enforced fairly regularly in the 1970s and before that time, but these interviews no longer occur. All four INS officers responsible for approving schools that we interviewed stated that they did not require these interviews. We found that, at least in relation to vocational and language schools, the INS was relying solely on the documentation submitted by the schools without performing any independent verifications, such as checking to see if the school is in fact accredited or verifying information from independent websites.

Although the regulations allow the District Director to waive the interview requirement, the regulations seem to contemplate that such a waiver would be granted on a case-by-case basis. Moreover, we did not find that the interview requirement had been waived in any district we visited. We believe that the lack of interviews stems more from the inability of the schools officers to devote sufficient time to the process, rather than a reasoned decision that interviews would not be useful and should be waived. Indeed, most of the schools officers to whom we spoke were not even aware that interviews were required.

While the regulations do not affirmatively require the INS to conduct site visits to schools before approving I-17 petitions, site visits were conducted fairly regularly in the 1970s and earlier. Yet, few if any site visits have been made since then in the four district offices we reviewed.

During our review, we selected a sample of 200 vocational, language, or flight schools from the INS's approved-schools database (STSC) that were approved by personnel in the INS's Atlanta, New York, Chicago, and San

Francisco districts. For these schools we reviewed the initial I-17 petition and required supporting documentation submitted by the school, any subsequent I-17s submitted by the schools, and any evidence contained in the file relating to INS actions taken.

Several of the approved schools selected in our review appeared questionable to us and may not have been approved had a site visit been made. Some examples follow:

- A vocational school was approved in February 2001 to teach press printing operations. The I-17 and supporting documentation provided by the school indicated that the school was neither accredited, licensed, nor approved by a federal or state agency; the school's brochure advertised that students would be doing "real" jobs for "real" customers and that students would be paid an hourly wage based on their grade. A site visit by the INS seems warranted to ensure that this is a school, as opposed to a business, operation.
- A vocational school was approved in November 1990 to teach students to be wardrobe consultants, color designers, color coordinators, and personal stylists. The school's catalogue indicated that the course consisted of five class sessions, seven to eight days each, separated by two to three months of home study. The documentation to support that the course meets a vocational or professional objective (i.e., that at least three graduates of the school have obtained employment in the particular field of study) consisted of letters from one graduate who now owns the school and two graduates who are self employed as color consultants.
- A vocational school was approved in April 1981 to teach students the music business. The school's Internet website, which promises to provide instruction on "How to be a successful singer, band, group, or manager," does not include any information on the physical location of the school. Based on the website, this appears to be an on-line school. This school claimed to be accredited, but a search of the accreditation organization's website revealed that the school was not currently accredited by the organization.

## 5. Lack of re-certifications

Federal regulations also provide that the INS may periodically review the approval of a school for continued eligibility. Regular re-certifications would help identify schools that are no longer active or schools that are committing fraud. Regular re-certifications would also ensure that the approved schools have maintained their accreditation, licensure, or approval status. According to INS officials, re-certification of schools is particularly necessary for certain types of schools – in particular, vocational, flight, and language schools – since these schools tend to be transitory. For example, we found based on our review of the files that in one re-certification effort, the INS learned that a school no longer existed. When the adjudicator contacted a flight school that had failed to respond to the INS’s inquiries, she was told that the school no longer existed and that the owner, now living in Alaska, “lost his plane awhile back.” In another file that indicated that a re-certification had been requested, the INS identified a language school that had been issuing I-20 forms using another school’s INS-approval code number. The owner of the school had initially taught at the original school, which subsequently closed. When the owner received the re-certification notice, she admitted to the INS what she had been doing. Her explanation was that she had submitted the paperwork for INS approval but, since the process was taking so long, she decided to continue to use the old code number.

Based on our review, we determined that the last nationwide re-certification was conducted by the INS in 1983 (when the STSC system was implemented). In addition, none of the INS districts we visited had been performing regular re-certifications. In fact, only one of the districts, San Francisco, had conducted any re-certifications since 1983, and this re-certification effort occurred around 1990.

We also reviewed the files of the 200 schools in our sample to try to determine whether those schools were still active or accredited. Based on preliminary checks we performed, including comparing the schools against a list of closed schools maintained by the U.S. Department of Education, we concluded that at least 86 of the 200 schools – or 43 percent of the schools – were either no longer active or likely no longer active. Of the 114 active schools in our sample, nine schools were no longer accredited by the original accrediting organization they cited when they had completed their initial I-17 petition.

## 6. Review of Huffman Aviation file

As part of our investigation into the delayed notification of Huffman Aviation about the student status of Atta and Alshehhi, we obtained from the INS's Miami District its file containing the documentation submitted by Huffman Aviation requesting certification. We found, based upon our review of the file and our interviews with officials from Huffman Aviation, that had the INS conducted a site visit, it is likely that the school would have been denied certification. Our review of Huffman Aviation documents leads us to question whether its students were enrolled in a "full course" of studies, that is, over 22 hours per week of course work since the primary course of study was non-classroom work. In addition, we question whether Huffman Aviation should continue to be eligible to issue I-20s for foreign students to obtain student visas and changes of status.

Huffman Aviation submitted its original I-17 petition on or about May 22, 1989. Only the first page of Huffman's original I-17 was in the file we obtained from the INS, although the file did contain additional supporting documentation.<sup>116</sup> The President of Huffman Aviation had submitted an affidavit that stated, "All students are required to attend classes daily and are tested on a weekly basis." In addition, a syllabus indicated that obtaining a private pilot's license would require 40 hours of flight time and 15 hours of "Ground school and briefings" and that the course could be completed in "about 45 days if you are flying every day."

On June 2, 1989, the INS responded to Huffman and requested additional information, including "evidence that the school offer[ed] a 'Full Course of Study.'" The INS directed Huffman to the definition of "full course of study" as set forth in the publication used by schools to assist in filling out the I-17 petition. Huffman submitted a response on October 2, 1989, and included some of the additional information requested, but it did not submit anything related to the "full course of study" request for information.

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<sup>116</sup> A new I-17 filed in August 1999 was also in the file. Huffman Aviation indicated on the I-17 that it was submitting the I-17 to "update" Huffman's records. Although it was an update and not a new petition, the INS, as part of its process, reviews and approves these types of I-17s like new I-17s. This I-17 petition was approved on October 1, 1999.

On November 20, 1989, the INS wrote to Huffman, again requesting additional information, including “an addendum to your response to Question #19 that lists all courses of study and the time necessary to complete each course of study.” On December 21, 1989, Huffman submitted additional information to the INS in support of its petition, indicating that among the documents being submitted were “the relevant pages of our syllabus that demonstrates that we do have a full course of study and the hour requirements.”

The INS responded on February 8, 1990, and for the third time stated that additional information was requested with respect to, among other things, the school’s ability to offer a full course of study:

Please read the attached definition of ‘Full Course of Study’ VERY CAREFULLY. A ‘Full Course of Study’ for a school such as Huffman Aviation means a minimum of 18 to 22 clock hours of attendance per week.<sup>[117]</sup> Neither the syllabus nor the addendum that you submitted indicate that your fulltime students attend the school for 18-22 clock hours per week. Please submit an addendum to Question 19 [on the I-17 petition] that lists each course of study and the time necessary to complete each one... If the school does not offer a ‘Full Course of Study’ according to this definition, the Immigration and Naturalization Service cannot approve the school for attendance by nonimmigrant students.

The addendum should be in this format:

Commercial Pilot	500 hours (300 Hours ground school 200 hours flight time)	20 Weeks at 25 Hours per Week
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The flight school then submitted a letter dated February 20, 1990, that stated in the format requested the breakdown for each “full course of study” that Huffman offered:

Private Pilot	106.5 hours (66.5 hours flight training)	4 weeks at 27 hours per week
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<sup>117</sup> As discussed earlier in this report, 18 hours per week attendance is required for vocational students whose primary course of study is classroom work and 22 hours per week attendance is required for vocational students whose primary course of study is lab or shop work, i.e., non-classroom work.

(40 hours of ground school)

The breakdown for the “Instrument Rating” course showed that it could be completed in 3 weeks at 26 hours per week and that the “Commercial Pilot” course would be completed in 20 weeks at 22.5 hours per week.

On June 22, 1990, the INS approved Huffman Aviation’s I-17 petition.

Based on the available evidence, we do not believe that Huffman Aviation offered or currently offers a “full course of study.” We interviewed Rudi Dekkers, the Chief Executive Officer and President of Huffman Aviation. He told the OIG that his courses required no formal classroom study and that the weekly flight time would not encompass 18 or more hours a week. Indeed, Dekkers told us that flying 18 hours or more per week would be “too much.” Although the information Huffman provided in its third response to the INS stated in a conclusory fashion that it was meeting the INS’s requirements, the supplementary material that it had submitted with its application showed that it was not. For example, as stated above, Huffman submitted a syllabus indicating that obtaining a private pilot’s license requires 40 hours of flight time and 15 hours of “Ground school and briefings,” and that the course could be completed in “about 45 days if you are flying every day.” Based on our calculation, 55 hours over 45 days constitutes an average of 8.5 hours per week, far less than the 22 hours per week required by the regulations for a “full course of study” for vocational schools that offer primarily non-classroom studies. In addition, the INS file that we reviewed contained a Huffman Aviation document labeled “Commercial Pilot Training Course Outline.”<sup>118</sup> Like the course syllabus, this document stated that obtaining a private pilot’s license would require 40 hours of flight time and 15 hours of ground school and seven weeks to complete the course. The document also stated that obtaining a “Commercial Multiengine Instrument” rating required 25 hours of flight time and 15 hours of ground school, and it stated “Full-time student, completion in four weeks.” By our calculation, this would require approximately 10 hours of instruction per week.

Moreover, in its I-17 petition submitted in 1999, Huffman Aviation indicated in response to Question 19, which asks for the courses of study and

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<sup>118</sup> From the condition of the file, we were unable to determine when the INS received this document.

time necessary to complete each, that its response was “Total time estimate: approx. 6 months.” In addition, Huffman’s petition stated that the school’s sessions were not based on semesters or quarters but that “students may start at any time.” In response to the question asking for dates of sessions, Huffman stated “[o]ur students register at all times of the year. Their programs are organized to their individual needs.”<sup>119</sup>

In addition to the requirement that Huffman Aviation must offer a “full course of study,” it is also required to certify on I-20s that each student is actually pursuing a full course of study. Huffman certified that Atta and Alshehhi were pursuing a full course of study and that the dates for the course were September 1, 2000, until September 1, 2001. But we found, based on Huffman’s records, that Atta and Alshehhi never logged the requisite 22 hours per week of instruction.

A follow-up site visit to Huffman, based on the schools officer’s concerns about the school’s ability to offer a full course of study, would have provided the INS more accurate information with which to make its determination about Huffman’s certification. Such a site visit never occurred.<sup>120</sup>

## **B. Lack of security features on I-20 forms**

INS investigators and adjudicators consistently reported that they believed that I-20 fraud is prevalent. The INS Inspector’s Field Manual alludes to this concern, stating, “Fraudulently issued Forms I-20 are not uncommon.”

Once a school is certified by the INS to accept foreign students, the INS gives the school blank I-20 forms to provide to foreign students as proof that they have been accepted by the school. In addition, schools are permitted to obtain I-20 forms from private vendors who produce the software to generate

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<sup>119</sup> The INS did not request additional information before approving this I-17 petition.

<sup>120</sup> While Huffman Aviation may not have been entitled to issue I-20s to foreign students to obtain student visas, Atta and Alshehhi could have continued to pursue the pilot’s license program on a part-time basis while in the United States on their visitor visas, since INS practices consider such study as being consistent with the purpose of a visitor visa. For a discussion of our concern about the INS’s lack of information about nonimmigrants taking classes on a part-time basis, see Chapter Eight.

the forms on a computer. The current I-20 form has no serial number or unique stamp. As a result, the form lacks security features and is relatively easy to counterfeit. Also, many schools that were once approved by the INS, but which have either had their approvals withdrawn or have closed, still have a supply of I-20 forms.

As previously noted, foreign students may leave and re-enter the country, but they must have the signature of a DSO on the student copy of the I-20, signifying that the alien is still a student and plans to return to the school after a temporary absence. However, immigration inspectors have no way to ascertain the authenticity of the DSO endorsements. I-20 holders who are no longer active students could easily forge subsequent DSO endorsements, enabling them to re-enter the country.

An official with the State Department's Bureau of Diplomatic Security, which conducts investigations of visa fraud, told the OIG that falsifying I-20s is the most common method by which student visa fraud is committed. Investigators in all four INS district offices we visited told us that school employees with access to these forms have fraudulently issued I-20s to aliens for a fee to enable them to enter the United States.

Although fraud with I-20s is easy to commit, it is difficult to detect. I-20s lack security features, and the State Department does not have access to INS databases to confirm the information listed on the I-20, such as whether the school is authorized to issue I-20s. Primary immigration inspectors at the POEs also do not have access to the STSC database to confirm any information on the I-20 form.

### **C. Inadequacies in collecting information concerning student status**

To obtain student visas or student status, foreign students must be enrolled in a full course of study, and to be considered in status, students must remain enrolled as a full-time student. With respect to academic and language school students, federal regulations specifically provide that “[t]he student is considered to be maintaining status if he or she is making normal progress toward completing a course of studies.” 8 CFR § 214.2(f)(5). Because students must remain in school full time to be entitled to remain in status, the INS needs to know when students are taking classes part-time, quit, fail, or do not show up for school.

To receive INS certification, schools must agree to notify the INS when a student terminates attendance at the school or is no longer enrolled in a full course of study. However, the only affirmative reporting requirement is that the school notify the INS of terminations or other lapses in attendance when the INS provides the school with a list of students to identify. The INS has not provided this information to schools since 1989.

In addition, even when schools voluntarily report information about students, the INS has no way to collect or record this information. Such information is not systematically recorded in STSC or in any other INS database. Schools in the past have attempted to report to the INS students who were accepted by the schools and who were issued I-20s but who failed to show (“no-shows”). However, the INS was so overwhelmed by the reports of “no-shows” that it directed schools to no longer report this information.

Since the INS does not collect information in STSC about the status of students, currently the only way for an INS immigration inspector at a port of entry to verify that a returning student is still in active status is to check that the I-20 presented by the student contains a current endorsement by the school’s DSO. Federal regulations do not require that this endorsement occur within any specified time before the student’s departure, and the instructions on page 4 of the I-20 state that the endorsement is valid for six months.<sup>121</sup> The immigration inspectors we interviewed said that, as a normal practice, they accept any DSO endorsement made within the year prior to the foreign student’s entry. This means that the inspector has no way of checking the authenticity of the DSO signature or knowing if students terminated their studies after the date of the signatures. The signatures can easily be forged, and the inspector has no way of detecting the fraud.

#### **D. Deficiencies in the Student and Schools System (STSC) database**

The STSC is the INS database that records information about the schools approved to issue I-20s, the foreign students who have enrolled in approved schools, and changes in identifying information about the schools or students

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<sup>121</sup> The regulations provide that students are permitted a temporary absence from the United States and define temporary absence as five months or less for F-1 students. 8 CFR § 214.2(f)(4). The INS’s Operations Instructions define temporary absence for M-1 students also as five months. OI 214.2(m).

that are provided to the INS by the submission of a new I-17 or I-20. As noted above, the I-20s and I-17s are sent to ACS, a private contractor in London, Kentucky, for data entry, and this information is eventually uploaded into STSC.

We found that, for several reasons, the information in STSC is unreliable and inaccurate. First, as stated previously, the INS does not collect certain information about students, such as when they quit, fail, or do not show up at the school from the beginning. STSC information about the schools is equally unreliable because, as noted previously, the INS makes little effort to assess whether certain schools are still accredited or even in existence. In some instances, we found that while information in the hard copy file indicated that a school was no longer in operation, there was no evidence that the INS provided this information to ACS, the contractor that handles the data entry. We also found that the INS has failed to provide to ACS updated information, such as new addresses and name changes of schools, when that information was submitted to the INS on a new I-17 by the schools.

Therefore, not surprisingly, STSC is riddled with inaccuracies. As noted previously, in our review of 200 files of schools we selected from STSC's list of "active" schools, 86 of those schools appeared to no longer be in operation.<sup>122</sup> In addition, of the 114 active schools we reviewed, STSC showed incorrect addresses for 40 schools and incorrect names for 16 schools. Of the 40 schools with incorrect addresses, we found documentation in eight of the files that showed that the INS had been informed of the new addresses. Of the 16 schools with incorrect names, we found documentation in four of the files

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<sup>122</sup> Of the 86 schools we determined were no longer active or were likely inactive, we found five cases in which there was a completed form in the file indicating that the INS had determined that the school was no longer approved to issue I-20s. This happened when the INS had received an I-20 from ACS that had been returned to ACS as undeliverable, because there was no such address for the school, or because the school had informed the INS that it was no longer in operation and wanted to withdraw its petition. This information is usually recorded on an I-702 form (School Violations and Approval Review) and sent to ACS for data entry and uploading into STSC. Based on our review of these five files, we were unable to determine when or if these forms were ever sent for data entry, since they were undated. We were told by personnel at one of the district offices that they did not complete these forms but instead simply noted in the file that the school was being withdrawn.

that showed that the INS had been informed of the school's name change. We found no evidence in any of the files that ACS had been informed of any of these changes.<sup>123</sup>

We also found that processing errors contributed to the inaccurate information in STSC. Two of the schools in our sample, which STSC indicated were authorized to issue I-20s, were never approved and therefore should never have been in the STSC system. When a school's officer denies certification of a school, no forms are sent to ACS; however, when an approved school is de-certified, the INS sends an I-702 form to ACS for data entry. Based on our review of the schools' files, we determined that the INS schools officer for both schools mistakenly sent an I-702 to ACS for data entry. It appears that since the schools were not in the system and could not therefore be withdrawn, a record for the schools was created in STSC for the schools based on the information on the I-702. While at the district offices, we also randomly selected files of schools that had been approved by the district office within the past two years and checked whether these schools had been entered into STSC. Of the 38 files we selected, 14 (37 percent) did not appear in the STSC database. We did not investigate whether this information was not in STSC because the INS failed to provide the I-17 to ACS or because ACS failed to enter the information.

The consensus among the schools officers, immigration inspectors, and investigators we spoke with during our site visits was that the STSC system was unreliable and therefore not useful. At all four districts we visited, the schools officers instead used alternate systems to track schools in their districts. Two had developed their own databases, and two relied on paper records, such as index cards.

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<sup>123</sup> The Enhanced Border Security and Visa Entry Reform Act of 2001, which was approved by Congress and recently signed by the President, requires the Attorney General to provide the Secretary of State with a list of all institutions certified to issue I-20s no later than 30 days after the enactment of the Act. This list is intended for use by consular officers to verify that persons applying for student visas are submitting I-20s issued by INS-approved schools. Given the inaccuracies in the INS's STSC database, we believe that any list of approved schools would not be reliable.

## **E. Lack of enforcement**

According to investigators we interviewed in the four district offices we visited, conducting investigations of students and schools for visa fraud has always been a low priority. Investigations personnel stated that with only 2,000 investigators nationwide, the INS did not have enough investigative resources to devote to students and schools. According to these investigators, their top priorities prior to September 11, 2001, were to apprehend criminal aliens, disband large manufacturers of fraudulent documents, dismantle anti-smuggling organizations, and stop worksites from employing illegal aliens. Foreign students and schools were generally only investigated if they fit in one of these categories. Since September 11, terrorism has become the top priority. Additional duties that investigators have recently been assigned include tracking down the approximately 300,000 aliens who have outstanding deportation orders against them and conducting background checks on airport employers and employees.

Foreign students who are no longer in status because they quit school or never showed up for school are considered overstays and can be removed from the United States. As discussed previously, the INS does not systematically collect this information about the students from the schools. Moreover, even when the INS has the information, it generally takes no action. Some schools report information about “no-shows” and “termination” to their local INS district offices. In the district offices we visited where an adjudications officer was the “schools officer,” information reported by schools was provided to investigative personnel for entry into the INS’s National Automated Information Lookout System (NAILS).<sup>124</sup> But the investigative personnel did not enter the information into NAILS.

## **F. Lack of training for designated school officials and INS schools officers**

In addition to signing the I-20 certifying that students have been accepted to a full course of study and have provided proof of ability to pay, Designated

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<sup>124</sup> NAILS is one of the law enforcement databases used by inspectors at the ports of entry to determine whether possible derogatory information about an alien exists.

School Officials (DSOs) are responsible for representing schools in all matters related to foreign students. Their duties include, among other things, complying with INS recordkeeping and reporting requirements; monitoring student activities and reporting violations to the INS, such as failure to maintain a full course load or engagement in unauthorized employment; and notifying the INS of material changes in the school's program, accreditation, and level of education offered.

Currently the INS has no formal, mandated training program for DSOs. While the larger school associations, such as NAFSA, provide such training, it is geared towards DSOs at public and private colleges and universities, not vocational and language schools, who, according to INS officials, need more training.<sup>125</sup> During our site visits, INS district office school adjudicators commented on the need for such training. They noted that the DSO function rotates frequently at schools and, as a result, many DSOs are untrained and unaware of regulations. As a result, they said, violations of the law frequently occurred.

For example, the DSO who certified the I-20 forms for Atta and Alshehhi for use in their applications for change of status told the OIG that at that time she had just recently been assigned as the DSO and that she had been provided no training.<sup>126</sup> As a result, she said she was unsure of what she was doing and that either Atta or Alshehhi directed her on the proper procedures for filling out the forms.

INS personnel in district offices assigned to approve and monitor schools also are not provided with any formal training. Instead, they learn on the job. Many to whom we spoke stated that they were not sure what they were supposed to be looking for when they certified schools. In the district offices that we visited, the schools officers appeared unaware that regulations provided that the INS should conduct an in-person interview with a school representative

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<sup>125</sup> NAFSA was originally called the National Association of Foreign Student Advisors. In May 1990, the name of the organization was changed to "NAFSA: Association of International Educators." The acronym was retained despite the name change.

<sup>126</sup> We also noted in our review of the INS's Huffman Aviation I-17 file that it did not contain an I-17 petition listing this school coordinator as a designated school official as required by the regulations.

before approving an I-17 petition. They also commented about the lack of clarity in the regulations and the lack of INS guidelines for the approval process. The INS informed us that it is now in the process of developing certification procedures.

#### **IV. Student and Exchange Visitor System (SEVIS)**

The INS is currently developing a new computer system to more closely track information about foreign students and the schools in which they are enrolled. This system, the Student and Exchange Visitor System (SEVIS), is also designed to collect information about aliens enrolled in a State Department-approved exchange visitor program.<sup>127</sup> In this section of the report, we first describe the history of SEVIS, including the INS's latest schedule for implementation, and the visa process as it is designed to work under SEVIS. Next, we analyze SEVIS, including the deficiencies in the foreign student program that SEVIS is intended to address, some operational problems in the foreign student program that SEVIS will not address, and the impact of the implementation schedule for SEVIS.

##### **A. History of SEVIS**

After the INS's foreign student program came under criticism when it was discovered that one of the terrorists involved in the February 1993 bombing of the World Trade Center was in the United States on an expired student visa, the director of the Department of Justice's Office of Investigative Agency Policies sent a memorandum to the Deputy Attorney General citing concerns regarding possible terrorism and alien criminal activity. This September 24, 1994, memorandum specifically mentioned the need to subject foreign students to thorough and continuing scrutiny before and during their stay in the United States. On April 17, 1995, the Deputy Attorney General asked the INS Commissioner to address this issue. This led to the formation of an INS task force in June 1995 to conduct a comprehensive review of the F, M,

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<sup>127</sup> As noted previously, currently the State Department maintains a database called the Exchange Visitor Information System (EVIS), which functions similarly to STSC. Paper forms are data entered into EVIS. Once SEVIS is introduced, the INS also will be responsible for maintaining all of the information about foreign exchange visitors in SEVIS, although the State Department will remain responsible for approving the sponsors that participate in the foreign exchange program.

and J visa processes. Besides the INS, the task force included members from the State Department and the United States Information Agency, and experts in the administration of international student programs.

The resulting task force report, issued on December 22, 1995, identified some of the same deficiencies in the foreign student program we discussed in this chapter of the report, including deficiencies in the tracking and monitoring of foreign students; weak and ineffective data systems; the ineffective district office practice of assigning student/schools responsibilities as a collateral duty; the lack of a system to monitor or audit schools; and the lack of clarity in school approval requirements. The task force recommended, among other things, that the INS collect and monitor information electronically about foreign students through the issuance of student registration cards that would contain biometric identification information through fingerprints and that students be required to notify the INS whenever they changed their student program, such as transfers, change of major, or other event.

On September 30, 1996, Public Law 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was enacted. It directed the Attorney General, in consultation with the Secretary of State, to develop and conduct a program to collect certain information on nonimmigrant foreign students and exchange visitors from approved institutions of higher education and designated exchange visitor programs. The information to be collected included the alien's name, address, date of birth, visa classification, student status, course of study, academic disciplinary actions taken, and termination dates and reasons. Schools had already been required by the INS since 1983 to manually collect this data; IIRIRA mandated that the information was to be collected electronically where practicable. IIRIRA also mandated that the INS implement the system by January 1, 1998, use a phased-in approach (starting with students and exchange visitors from at least five countries, with full expansion within four years), and establish a fee of less than \$100, which would be paid by the foreign students and collected by the schools, so that the program would be self-funded.

In June 1997, the INS developed a computer program as a pilot project, the Coordinated Interagency Partnership Regulating International Students (CIPRIS), to test the concept of an electronic reporting system. CIPRIS was tested at the Atlanta Hartsfield Airport, the INS Atlanta District Office, the Texas Service Center, and 21 educational institutions in Georgia, Alabama, North Carolina, and South Carolina. The most significant difference between

the old process and CIPRIS was that schools provided information about themselves and their students directly into INS computer systems instead of the INS relying on information from forms being data entered after the fact by contractors. In addition, the new process, which was later changed, was intended to involve the issuance of student registration cards that would contain additional identifying information about the student such as fingerprints and photographs that were collected by the schools.<sup>128</sup>

CIPRIS, and later SEVIS, encountered significant opposition from several associations representing schools, particularly the Association of International Educators, which represents 8,000 foreign student advisors at 2-year and 4-year public and private institutions; the American Council on Education, which represents 1,800 college presidents at 2-year and 4-year public and private institutions; and Teachers of English to Speakers of Other Languages, which has 14,000 members. Schools objected to foreign students being subjected to monitoring; to schools being subjected to the burden of collecting fingerprints and photographs of students for the registration cards; and to schools being required to collect the processing fee from students, most of whom would still be in their home countries when the fee would have to be collected.

The CIPRIS pilot program officially ended in October 1999. However, the program continued after that date as a prototype pending the development of a nationwide system. Around the time that the CIPRIS program ended, the INS decided to abandon the idea of student registration cards and the collection of fingerprints and photographs. The INS decided to drop the biometric card requirement and instead use a “bar code” to be placed on the I-20 form issued to the student.

According to the INS, the CIPRIS pilot system was designed from its inception as a “throw-away” program whose purpose was just to test the feasibility of electronic reporting. In July 2001, the name of the program was changed to SEVIS to distinguish between the two systems, which, although they functioned similarly, were substantially different in design. Schools

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<sup>128</sup> Although IIRIRA mandated that the INS collect information about foreign students attending only colleges and universities (not vocational or language schools), the INS decided to include all foreign students in its new program.

participating in the CIPRIS program were provided with separate computers to operate CIPRIS; SEVIS participants would access the system through the Internet with user passwords.

In December 1999, the INS published a proposed regulation setting the foreign student processing fee at \$95. The INS received over 4,000 comments to the regulation. On February 22, 2000, twenty-one U.S. Senators wrote to the INS requesting a postponement of the fee rules. The INS, the Department of State, and school representatives submitted proposed legislative changes for fee collection to Congress in April 2000. Public Law 106-396, enacted on October 30, 2000, required that foreign students and exchange visitors pay the fee directly to the INS (through the Attorney General) prior to applying for a visa, rather than requiring schools to collect the fee and transmit it to the INS.

Since the INS was relying on fee collections to fund SEVIS, the delays in establishing the fee process affected the timing of the implementation of SEVIS. And despite the changes in fee requirements, the school associations continued their opposition to SEVIS. On August 2, 2001, with the support of the school associations, H.R. 2779 was introduced to halt the implementation of SEVIS altogether.<sup>129</sup> NAFSA issued a press release supporting the proposed bill and stating that the implementation of SEVIS would: (1) send an unwelcoming message to international students and exchange visitors by singling them out for monitoring; (2) be costly for schools since its reporting requirements would require overhauls of university information systems; and (3) place an unacceptable financial burden on applicants.

The September 11, 2001, terrorist attacks drew renewed attention to foreign students. On October 26, 2001, Public Law 107-56, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act) was enacted. Section 416 of this law mandated that SEVIS be fully implemented before January 1, 2003.

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<sup>129</sup> The House of Representatives Committee on the Judiciary referred H.R. 2779 to the Subcommittee on Immigration and Claims on September 10, 2001. No further action was taken and, as discussed in this chapter, Congress later passed legislation strengthening SEVIS.

The USA PATRIOT Act also required SEVIS to include information on the foreign student's port of entry and date of entry, and it re-defined schools required to be in SEVIS to include flight schools, language training schools, and vocational schools.<sup>130</sup> The law provided \$36.8 million in funding for SEVIS implementation. Because of this funding, the Office of Management and Budget required the INS to delay implementation of any student fees until the appropriation has been expended.

In contrast to their prior opposition, both NAFSA and the American Council on Education (ACE) issued public statements after the events of September 11 supporting SEVIS implementation. We contacted representatives of NAFSA, ACE, and the Career College Association, which represents 950 schools that provide vocational programs, to discuss SEVIS with them. All expressed support for SEVIS. While they described some concerns related to the monitoring of students, they said that school associations have accepted the inevitability of implementing SEVIS and are now focused on opposing the fee and the proposed method of collection.<sup>131</sup>

## **B. How SEVIS will work**

According to the INS, SEVIS will electronically record data about schools and foreign students, primarily by schools entering information directly into SEVIS or by batch processing that will occur through interaction between a school's computer systems and SEVIS. Schools will select the method they

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<sup>130</sup> As noted above, Congress also recently approved the Enhanced Border Security and Visa Entry Reform Act of 2001, which formally amends IIRIRA to require the INS to collect additional information about students, information which the INS already plans to collect once SEVIS is implemented. The Act also requires the State Department to obtain additional information from student visa and exchange visitor applicants and requires the INS to conduct periodic reviews of schools, which we discuss in more detail later in this chapter. It also establishes requirements affecting the State Department, INS-approved schools, and the INS for dealing with foreign students that must be implemented within a specified number of days of the Act and that must remain in effect prior to the full implementation of SEVIS. The transitional program requirements for the INS include notifying schools when a foreign student has entered the United States – which the INS currently accomplishes by sending an I-20 to the school – and, as discussed earlier in this chapter, providing the State Department with a list of INS-approved schools.

<sup>131</sup> We address the issue of fee collection in greater detail in Section V C 2.

want to use. The INS will not have to rely on schools and students submitting forms to the INS. Since SEVIS will be Internet-based, schools that enter information directly into SEVIS will not be required to obtain additional hardware or software.<sup>132</sup>

### **1. Data to be collected in SEVIS concerning foreign students and exchange visitors**

SEVIS will collect data on all full-time foreign students (F and M visa status) and exchange visitors (J visa status) and their dependents. Each student and exchange visitor's SEVIS record will include the following:

- Form I-20 and Form DS-2019 information.
- Personal information, including name, place and date of birth, country of citizenship, and current address in the United States.
- Whether the student is full- or part-time.
- Date the student's studies began.
- Number of course credits completed each year.
- Transfers and extensions of course of study.
- Degree program and field of study.
- Information on practical training and other employment, including beginning and ending dates.
- Date studies ended and the reasons why.
- Date the visa was issued and the visa classification.
- Academic disciplinary actions taken against the student due to criminal convictions.
- Current academic and program status of the student.
- Dependent names and current addresses.

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<sup>132</sup> For the schools that will transfer information electronically through their computer systems, some adjustments to their computer systems will be necessary for the communication with SEVIS.

## **2. Data to be collected concerning schools**

Once a school completes an I-17 petition, SEVIS will record the following data concerning schools approved to issue I-20s:

- Identifying information from the schools.
- Names of DSOs.
- Whether the school is an academic school, vocational school, or language school or is authorized to accept foreign students in all of the above visas categories.
- Programs for which the school is approved to issue I-20s.
- Licensing or accreditation status.
- Degrees offered.
- Average number of classes, students and teachers.
- Annual costs of schooling.
- Whether the school is approved to issue I-20s or whether that approval has been withdrawn.

## **3. SEVIS procedures**

### **a. School certifications**

Schools will be able to complete and submit their request for certification (Form I-17) electronically to their local INS district office. A petitioning school will initially be provided with a temporary password to enable the school to enter the I-17 information electronically. SEVIS will not accept incomplete I-17 applications or information that falls outside of certain parameters. An electronic alert would notify the INS district office that the petition has been filed. The petitioning school, however, will still have to mail the necessary documentation to support the petition.<sup>133</sup> The adjudicator at the

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<sup>133</sup> SEVIS will not eliminate the INS's need to maintain paper files and to track hard copies of documents. The INS will have to ensure that it can match the supporting documentation to the electronic I-17 information if the supporting documentation is not submitted with an I-17. It is unclear whether the INS will keep a paper record of the I-17 in a file for each school.

INS district office would then conduct a review to determine whether the school meets INS's criteria. Once the school's petition and supporting documentation has been reviewed, the adjudicator will note in SEVIS whether the school has been approved. If the school is approved, the DSOs at the school will be provided with logon IDs and passwords, which will enable them to access SEVIS. Schools will also be able to electronically update their I-17s.<sup>134</sup>

Each DSO will be provided with a unique logon ID, which will help promote accountability. The INS is also considering establishing a DSO certification program. All DSOs would be required to take training before receiving their SEVIS passwords.

According to INS officials, schools will also be required to be re-certified after a set period of time. According to INS Headquarters officials, vocational and language schools will be required to be re-certified more frequently than public schools, colleges, and universities. The INS had not yet determined when or how often schools will need to be re-certified.

Under SEVIS, once the re-certification time frame is determined, the schools' logon IDs will be set to expire unless the required re-certification occurs. E-mail alerts will be sent to the schools several months before the expiration date to remind them to re-certify. The INS will also be able to decertify a school that violates INS regulations by electronically invalidating the school's password.<sup>135</sup> This will prevent the school from issuing any additional I-20s and will therefore effectively exclude them from the program.

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<sup>134</sup> Unlike the former process that required schools to submit a new I-17 petition that had to be re-approved by the INS, schools will be able to make certain changes to their I-17 information, such as new DSOs, new addresses, or new school names, without approval from the INS.

<sup>135</sup> According to the INS, it had not yet decided how it will carry out this process of decertifying or invalidating a school, such as whether the district office will have the authority and capability to terminate the school's password and access to SEVIS or whether the district office will be required to make a recommendation that would then be carried out by INS Headquarters or some entity other than the district office.

### **b. Issuance of I-20 to foreign student**

Under SEVIS, when an alien applies to the school and is accepted, the school will, as before, be responsible for issuing an I-20. But rather than requiring the school to type the relevant information onto a hard copy of the student and school copies of the I-20, SEVIS will generate an electronic I-20. The DSOs will enter the I-20 data directly into SEVIS, if the real-time method is used. Under the batch method, schools will enter information for the forms directly into their own data entry systems, which will communicate with SEVIS. Once the applying student's information is entered into SEVIS by the school, the system will generate an I-20 form that contains a bar code number that is unique to that student. The school will send this form to the student, as it currently does.<sup>136</sup>

### **c. State Department access to SEVIS**

Foreign students will present this bar coded I-20 to their local consulate, along with the other required documentation, when applying for a student visa. After the visa is issued, the student's name, address, passport number, and other information will be captured in CLASS when the consular officer scans the bar coded I-20 into CLASS.<sup>137</sup> The date of issuance of the visa and the location of the consulate office issuing the visa will be uploaded from CLASS to SEVIS, which will then update the student's SEVIS record to indicate the location where the visa was issued and the date the visa was issued.

Before issuing the visa, the consular officer will have access to basic SEVIS information through CLASS. Consular officers will also be able to access the full SEVIS record through the Internet, if they need to do so. In this way, the consular officer will be able to verify the legitimacy of the I-20.<sup>138</sup>

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<sup>136</sup> Since this process will create the record regarding the student, there will no longer be a "school copy" of the I-20s collected by inspectors at POEs and transmitted to ACS for data entry.

<sup>137</sup> The technical means for accomplishing this process have not yet been finalized.

<sup>138</sup> Consular officers will be provided passwords to access SEVIS through the Internet.

**d. Inspectors' access to SEVIS and updating of student's record that student has entered the country**

Upon entering the United States, the student will present the bar coded I-20 to the INS immigration inspector. The INS plans for the primary immigration inspector to scan or data enter the bar code, which will then access the unique number for the I-20 to ensure that it is valid. If the I-20 is not valid or there is some other indication of a problem, the inspector will be notified, and the student should be referred to secondary. The secondary immigration inspectors will be able to directly access the full SEVIS records. According to INS officials, the technical process to achieve the record checking and problem notification has not yet been determined, although it is anticipated that SEVIS will be integrated with IBIS (Interagency Border Inspection System).

This process will also be designed so that the student's SEVIS record will automatically be updated to indicate the student's port of entry and the date of entry when the inspector swipes the I-20.

**e. Updating of student's record once student enrolls in school**

Once the student registers at school, the school will update the student's SEVIS record either by directly entering the information into SEVIS or by the school's computer system automatically notifying SEVIS of the student's enrollment once the school's computer system has been updated. If the student's SEVIS record does not reflect a registration within 30 days of the student's entry into the United States, an e-mail alert will automatically be sent to the school. Thereafter, if the student does not register and SEVIS is not updated within a set period of time after the notification (date unknown), the student will be considered out of status and removable. The system is designed so that the I-20 will then be invalidated electronically, and the student's record will show that the student is out of status.<sup>139</sup>

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<sup>139</sup> Since students can be accepted to more than one school, students can be in possession of multiple I-20s. When obtaining a student visa, the student is required to select a specific school. The visa records the name of the school the student is planning to attend. Once a visa is issued to the student for a particular school, all extraneous I-20s will be invalidated once CLASS uploads to SEVIS. The other I-20s should also be invalidated once  
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While the student is attending school, the school will be responsible for updating SEVIS with the required data relating to the student's status, such as when the student quits school or otherwise terminates attendance, changes majors, or changes addresses. Eventually, the INS plans to transfer to SEVIS information related to changes of status maintained by the service centers, information about reinstatements, and information about employment maintained by the district offices. The INS also plans to integrate SEVIS with the entry-exit system currently under development, which would enable the SEVIS record to be updated with the student's movements in and out of the United States.<sup>140</sup>

The INS and other authorized users of SEVIS, will be able to extract information from the SEVIS database. Authorized users will be provided with passwords to enable them to access SEVIS to search for information on specific students. The INS's Office of Information Resources Management can also generate specific reports from SEVIS for users. Analyses of SEVIS data can be performed using any of the parameters contained in the SEVIS record.

We were told that the INS is planning on generating periodic reports of students who fail to show up at school, but the INS has not yet determined who in the INS will receive these reports, how frequently the reports will be generated, or what action will be taken as a result of the reports. However, SEVIS access through logon IDs and passwords can be provided to INS district offices for investigations and enforcement use, allowing real-time queries and reports on demand.

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the student fails to enroll in the schools that were not selected by the student. This will not delete the record, but will make the extraneous I-20 unusable.

<sup>140</sup> Since IIRIRA mandated the development of an automated entry and exit control system, the INS has been working on an automated entry-exit system that would involve the electronic recording of entries and exits rather than the collection of the paper I-94s that are later data entered into NIIS. The Immigration and Naturalization Service Data Management Improvement Act of 2000 (PL 106-215) amended IIRIRA to set new deadlines, establish reporting requirements, identify those authorized to access the system, authorize funding, and establish a task force to implement the new entry-exit system. The new deadlines for the entry-exit system vary depending on the type of POE. Full implementation is required by December 31, 2005.

### **C. Schedule for implementation**

The USA PATRIOT Act mandates that SEVIS be fully implemented prior to January 1, 2003. The INS currently plans to have SEVIS *available* to real-time users on July 1, 2002, and to batch users sometime in the fall of 2002. In addition, the INS plans to have overseas consulate posts and the INS ports of entry connected to SEVIS by December 2002. However, few users will be actually using SEVIS in 2002. While SEVIS will be available in 2002, the INS has recently proposed regulations that will require SEVIS to be fully operational and actually in use by January 30, 2003.

Currently, the only schools that will be able to access SEVIS once it is available will be schools that used the previous CIPRIS system and a small number of schools in the Boston area that are part of a pilot program. They have been converted to SEVIS and are currently using SEVIS to issue I-20s. However, as discussed in detail in Section V C 1 of this chapter, the INS has issued proposed regulations that would require all schools (approximately 72,000) that want to apply for SEVIS access to be re-certified by the INS before they can use SEVIS and begin issuing I-20s. The proposed regulation provides for a cutoff date of January 30, 2003, by which schools that have not been re-certified will be unable to issue I-20s.<sup>141</sup>

For SEVIS to be fully functional, the INS must determine how the district offices will record in SEVIS the approval of student reinstatements and student employment authorizations. In addition, the service centers, which approve changes of status for students, must also be able to access SEVIS. Recently, the INS moved its planned implementation date for linking its service centers and district offices to SEVIS from the spring of 2003 to January 30, 2003, to comply with the proposed regulation.

### **V. OIG analysis of SEVIS**

Once fully implemented, SEVIS will enhance the INS's data collection abilities greatly. However, the tracking and monitoring of foreign students will continue to be significantly flawed, unless the INS devotes the necessary

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<sup>141</sup> The January 30, 2003, implementation date does not pertain to exchange visitor program sponsors. The Department of State will issue separate regulations establishing a compliance date for all exchange visitor programs.

resources to ensuring that the schools are providing accurate information; ensures that the schools are all properly re-reviewed before access to SEVIS is provided; ensures that a process is in place to analyze the information captured by SEVIS; ensures that adequate investigative resources are made available; and requires schools to be re-certified at reasonable intervals. In addition to any technical difficulties that may be faced in implementing SEVIS, the INS also faces major obstacles to implementing SEVIS before the current date proposed – January 30, 2003. Below we describe deficiencies in the foreign student program that SEVIS will address, the problems that SEVIS will not address, and the implementation difficulties that SEVIS faces.

#### **A. Deficiencies that SEVIS will address**

SEVIS as designed will improve data collection, reduce fraud, enhance data analysis, and enhance enforcement capabilities. Specific improvements are described below.

##### **1. Improved data collection**

Since I-17 petitions and I-20 forms will no longer be completed and processed manually, the INS's data records for students and schools under SEVIS should be more accurate. Information on schools applying to the INS for permission to accept foreign students will be entered directly into SEVIS by the schools. In addition, once approved, schools will be able to directly enter any changes to their records. Moreover, SEVIS will require schools to be re-certified at specified intervals, which means that school records will be updated by the INS even if the school does not update its own records. With respect to student information, I-20s will not be generated unless all necessary information is provided, which means that SEVIS should contain more complete information.

The INS will also be able to collect information about the status of students, such as whether the student is still a full-time student, where the student lives, and the type of program in which the student is enrolled. The INS will not need to rely on this information being provided in paper format, since schools will update student records individually or through batch processing.

Schools will easily be able to identify when a change of status has been approved because the student's SEVIS record will be updated by the INS service centers once processing is complete. SEVIS will eliminate the current

manual process in which the paper I-20 is returned to the school once approval has been granted. In addition, schools will be able to determine through SEVIS when and where a student entered the United States.

## **2. Improving fraud detection and deterrence**

SEVIS will enhance the INS's ability to detect and decrease fraud in the foreign student program. First, because schools will be able to generate I-20s only through SEVIS, only INS-approved schools with access to SEVIS will be able to generate I-20s. Accountability over DSOs will be improved, since each DSO will be provided with a unique password, enabling the INS to identify who is performing certain transactions. The INS will be able to electronically de-certify a school that violates program requirements by invalidating the school's password, thereby preventing the school from continuing to issue I-20s. SEVIS will also require schools to be re-certified at specified intervals. If this re-certification does not occur, SEVIS will automatically cancel the school's passwords.

With respect to students, the fact that I-20s will be bar coded will greatly enhance the INS's ability to detect fraud. Because I-20s will be generated with a bar code only through SEVIS, students will have more difficulty generating fraudulent I-20s. In addition, State Department consular officers and INS immigration inspectors will be able to determine the validity of the I-20 presented by an alien because I-20s generated by SEVIS will contain a unique bar code that will be scanned at overseas consular posts and United States ports of entry. Students who enter the United States after their course has begun will be identified as a "no-show" through SEVIS at the port of entry and can be refused entry. In addition, any I-20s not used by the student will be invalidated, preventing others from fraudulently using them. Inspectors also will be able to identify through SEVIS whether a returning student is in active status and will thus be able to deny entry to students who are not in active status.

SEVIS will assist in the detection of fraud engaged in by students at academic and language schools where students are permitted by law to stay in the United States as long as they are making progress toward their degree program. Investigators will be able to search SEVIS to identify students who have been in the same program for a lengthy period of time or identify schools that have a significant number of students who have been in school longer than the typical degree program requires.

## **B. Deficiencies SEVIS will not address**

Despite the improvements anticipated with the implementation of SEVIS, there are many problems in the INS's student program that SEVIS will not address.

For example, the INS plans to re-approve all of the schools currently authorized to issue I-20s before they will be able to access SEVIS, as well as require regular re-certifications of the approved schools in the future. But as previously discussed, the INS does not currently devote adequate resources to approving schools and reviewing previously approved schools. As a result, schools officers do not conduct site visits before approving schools, and schools are rarely re-reviewed once they are approved. To properly certify, re-certify, and monitor schools, full-time INS personnel devoted to managing the foreign student program will be needed. In addition, the process for approving schools that will be eligible to receive foreign students will still be a manual process. Unless schools officers are required to conduct on-site visits and follow up questionable information submitted by schools, many deficiencies that currently exist will continue.

Also, as discussed earlier in this report, DSOs are often not knowledgeable about their responsibilities and the requirements concerning students' eligibility to obtain student visas. The INS is currently considering developing an on-line DSO certification training program, which DSOs would be required to take before receiving a SEVIS password. This initiative would help to improve the process, but it will need to be implemented well before January 30, 2003, when the INS plans to implement SEVIS fully, and the INS will have to provide continual training because DSOs change frequently.

While improved data collection will enhance the student program, the information will only be useful in the detection of fraud if the INS devotes resources to monitoring the information and investigating instances of potential fraud. Although the SEVIS database will help identify potential fraud, such as schools with a large number of students with invalid I-20s or students with invalid I-20s having visas issued from the same city, the INS has not determined who, if anyone, would perform these analyses. To fully use SEVIS's capabilities, the INS needs to assign personnel and establish policies and procedures to address this analytic function. Moreover, as discussed previously, enforcement to uncover student and school fraud has been a low priority and investigative resources devoted to this issue have been limited. Although better information will be available to investigators on student no-

shows and terminations, it is not clear that the INS will use this information any more fully than it has in the past.

The INS officials we interviewed consistently reported that the success of SEVIS depends on the accuracy of the data in the system. To date, the INS has not formulated any concrete plans for conducting or requiring independent verifications of the data that the schools enter into SEVIS. The INS has had discussions with officials in the Department of Education and the Department of Veterans Affairs to determine whether their auditors could include sample verifications of SEVIS data into audits that these organizations routinely conduct of schools. However, this would only cover schools that receive federal funds from those two agencies. We believe independent reviews conducted at regular intervals are essential to ensure that schools have proper internal controls to deter and detect fraud and that schools enter foreign student information into SEVIS completely, accurately, and timely.<sup>142</sup>

### **C. SEVIS implementation difficulties**

#### **1. Ensuring that approved schools are re-certified prior to the January 30, 2003, implementation deadline**

Because the INS's current database, STSC, is inaccurate, incomplete, and outdated, the INS is requiring all INS-approved schools to reapply and be re-certified by INS district offices before allowing the schools access to SEVIS. The INS recently issued proposed regulations imposing a cutoff date of January 30, 2003, by which schools that have not been re-approved will be unable to issue I-20s.

As a result, approximately 72,000 INS-approved schools will need to be re-certified by January 30, 2003. The INS plans to start the re-certification process this summer, but it is still in the process of determining how to do this. As of the end of April 2002, re-certification procedures had been developed but not yet finalized. Once the procedures are finalized, they must be published as proposed regulations in the Federal Register, with a 60-day comment period. In addition, the INS still has to assign and train personnel to perform the re-

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<sup>142</sup> As noted earlier, the Enhanced Border Security and Visa Entry Reform Act of 2001 requires the INS to conduct periodic reviews of INS-approved schools to ensure they are in compliance with record-keeping and reporting requirements.

certifications and notify all the schools of the need and procedures for re-certification.

The INS is currently proceeding as if all 72,000 re-certifications will be completed in time for the January 30, 2003, implementation date. This would require the INS to approve approximately 8,000 schools per month if it began the re-certification process in early May 2002. It appears unlikely that the INS could meet such a demanding schedule.

First, the INS has to ensure that all schools are notified of the re-certification requirement. Since our review found that not all INS-approved schools had been entered into the STSC system and many of the school addresses on the STSC are incorrect, sources other than STSC are necessary for notification. Although school associations have been diligent about publicizing SEVIS, many schools, particularly the smaller language and vocational schools, are not members of these associations.

In addition, full-time adjudicators and investigators will be needed to re-certify so many schools. Currently, re-certifications are performed by adjudicators and inspectors as a collateral duty. The INS must also develop adequate written guidelines on conducting the re-certifications and provide adequate training to those responsible for performing the re-certifications and making site visits. Our review found that none of these important steps had been completed.

Although the re-certification process will be time consuming, it is essential for the INS to ensure that SEVIS is implemented properly, not just quickly. Any attempts to shortcut the re-certification process will result in potentially fraudulent schools retaining access to the system. At the same time, we believe that the INS should acknowledge that not all of the schools can be re-certified before January 30, 2003, and provide for this inevitability, including deciding whether schools without approval will be permitted to continue issuing paper I-20s to foreign students.<sup>143</sup>

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<sup>143</sup> After reviewing the draft report, the INS in its written response signed by the INS Commissioner stated, "I acknowledge the challenge of implementing this system under our proposed timelines, but unlike your conclusion, I am confident the INS's dedication to this significant effort will result in us accomplishing our January 30, 2003 goal." The INS did not provide any specifics as to how it would reach its goal.

## **2. Collecting the processing fee as required by statute**

Congress mandated that the SEVIS program be self-funding. The INS had planned to charge foreign students and exchange visitors a \$95 processing fee. As discussed earlier, school associations strongly opposed both the imposition of a fee and the method by which the fee was to be collected. Initially, the schools were required to collect the fee on behalf of the INS. In 2000, IIRIRA was revised to transfer the collection responsibility to the INS, and the fee was required to be collected before the student was issued a visa.

The INS initially requested that the State Department collect the fee on behalf of the INS. The State Department already has effective procedures in place to collect fees overseas. For example, the State Department imposes a machine-readable visa processing fee on visa applicants. Payment of this fee can occur in several ways, depending on the consular post. At some locations, the visa applicant pays the fee at the consular post. At other locations, the visa applicant pays the fee at a designated bank, obtains a receipt, and presents the receipt at the consular post as proof of payment when applying for a visa.

However, the State Department has objected to collecting the fee on behalf of the INS. The State Department official who serves as the SEVIS liaison to the INS gave us various reasons for the State Department's objections, including reciprocity concerns (other countries could, in turn, charge United States students a similar processing fee to study overseas), workload burdens (although the INS indicated willingness to pay the State Department an administrative fee), and legal concerns (only certain government agencies have the authority to maintain bank accounts overseas).<sup>144</sup>

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<sup>144</sup> In another situation, however, the State Department must collect a fee from visa applicants and transmit it to another agency. The USA PATRIOT Act, enacted in October 2001, requires the FBI to provide the State Department with access to certain criminal databases contained in the National Crime Information Center (NCIC). A Notice of Proposed Rule published in the February 25, 2002, Federal Register indicates that when a consular officer determines that a visa applicant may have a criminal record indexed in NCIC, the applicant will be required to submit fingerprints and pay a specified processing fee to the State Department. This fee, along with the fingerprints, will be forwarded by the State Department to the FBI.

In lieu of having the State Department collect the fee, the INS is requiring applicants to make payments either by mail to a bank or on-line. All payments need to be made in United States currency. School association representatives told us that, although they philosophically oppose the imposition of a fee on foreign students, they are more concerned about the method of collection. Both the NAFSA and the ACE representatives we contacted expressed concerns about the length of time it would take to process the payment by mail (the bank has said it will take approximately four weeks) and the lack of accessibility of some overseas students (particularly those in developing countries) to the Internet, credit cards, United States currency, or reliable mail systems. They see this as a barrier to students attending schools in the United States. NAFSA prefers to have the State Department collect the fee, and it does not believe the State Department has provided any credible reason not to do so. We also believe that requiring the State Department to collect the fee, while permitting it to retain an appropriate fee for doing so, would be the most efficient and equitable solution.

## **VI. Conclusion**

The INS's foreign student program has suffered from a lack of attention for many years, and as a result, the INS lacks accurate data about the schools that are authorized to issue I-20s, the students who obtain student visas and student status, the current status of those students, and whether fraud is being perpetuated in the foreign student program. The INS's implementation of SEVIS will help solve some of the problems in the foreign student program, but it will not cure all of the problems in the INS foreign student program. The INS must not only implement an effective electronic method tracking foreign students, it must also devote adequate resources to managing the entire foreign student program.

We believe that it is not likely that the INS will be able to fully implement SEVIS by January 30, 2003, as it contends it will. For full implementation of SEVIS, all schools must be re-certified; inspectors, adjudicators in the districts and the service centers, consular officers, and DSOs at a minimum must be trained how to use SEVIS and what to do in the event that the new system is not fully functioning; and students currently in the system with valid I-20s must be accounted for in SEVIS. If, as we believe it will be, full implementation of SEVIS is delayed beyond January 2003, the INS will continue to operate a system in which it knows little about the schools and students that participate in the foreign student program.

Even after SEVIS is implemented, we believe the INS must devote adequate resources to managing critical aspects of the foreign student program in addition to SEVIS and its operations. This requires full-time, well-trained personnel to carry out the important function of approving and re-certifying schools. The INS should establish detailed procedures and guidance to ensure that schools are properly approved, and re-certified and de-certified when necessary. The INS must also decide which office will be responsible for analyzing the information collected in SEVIS and provide that office with guidance about its role and how analyses should be completed to effectively monitor foreign students and schools. Similarly, the INS must devote resources to verifying the accuracy of information entered into SEVIS. Also, once potential fraud is identified, the INS must devote resources to investigate that fraud. If the INS does not devote sufficient personnel to address the approval and re-certification of schools, to analyze the data collected in SEVIS, and to investigate potential fraud, the impact of SEVIS will be minimal.

# **CHAPTER SEVEN**

## **THE INS'S PROPOSED CHANGES REGARDING FOREIGN STUDENTS**

### **I. Introduction**

After the firestorm of criticism that resulted from media reports that the INS had mailed notification to Huffman Aviation approving the student status of two of the September 11 terrorists, the INS implemented several processing changes with respect to I-20s and change of status applications. In addition, after September 11, a number of regulatory changes were proposed that would affect foreigners who want to attend school in the United States and the INS's processing of I-539 change of status applications. We discuss below the processing changes that have been implemented in the last few weeks and our observations about the likely effects of these changes. We also address the proposed regulatory changes. Although we do not address all of the proposed changes, which continue to be considered, we discuss some of the more significant proposals.

### **II. Proposed Processing Changes**

#### **A. Processing the student copy of the I-20**

On March 15, 2002, INS Headquarters issued to the field via e-mail new instructions concerning the processing of I-20s. Service centers were instructed that after adjudicating an I-539 and stamping the I-20 as approved, the adjudicator must retain in the receipt file a copy of the school's I-20, send the original school copy to the school within five days of adjudication, send the student's I-20 to the student within five days of adjudication, and mail a copy of the I-20 stamped "copy" to ACS within five days of adjudication. INS Headquarters issued another memorandum to the field three days later, on March 18, 2002, with the same instructions, although the memorandum does not require that a copy of the I-20 be retained in the service center's receipt file.

This was the first guidance on the processing of I-20s that INS Headquarters had issued in the last several years. These changes were simple to implement and immediately addressed the significant problem of I-20s not being returned to schools in a timely manner. The ease with which the change was implemented – via e-mail throughout the INS within days of when the

controversy over Atta's and Alshehhi's change of status applications arose – further demonstrates that the part of the I-539 process that dealt with the I-20s had not been managed effectively prior to this crisis.

This new procedure places responsibility for completing the process with the adjudicator and provides some measure of accountability if the I-20s are not returned in a timely manner. However, to help the adjudicator complete this task, the INS should require address labels for ACS and for the school to be pre-printed and in the file or otherwise accessible to the adjudicator. This occurs currently with the student's address and allows the adjudicator to simply apply the label to the envelope containing the student's copy of the I-20.<sup>145</sup> In addition, INS Headquarters should clarify whether a copy of the I-20 is required to be kept in the service center's receipt file.

The INS's change in procedures did not address the return of school I-20s that are collected at the POEs when foreign students enter the country, which constitutes the overwhelming majority of I-20s. For this reason, we sought to determine what steps were being taken to expedite the return of these I-20s from ACS to the schools. The INS had determined that the POEs do not have the resources to copy the I-20s, mail the copies to ACS, and mail the originals to the schools. The INS therefore instructed the POEs to send to ACS daily via overnight mail all I-20s collected at the POE, and ACS has agreed to process and return the I-20s in less than the 30 days currently required by the contract.<sup>146</sup> To effect both the processing of the copies received from the service centers and the originals received from the POEs, we found that the INS has begun the process of modifying its contract with ACS.<sup>147</sup>

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<sup>145</sup> Based on the confusion we found in INS Headquarters and the TSC about the proper address for ACS, we recommend that the INS ensure that all INS employees have the correct address for ACS.

<sup>146</sup> We also found that ACS has approximately 140,000 I-20s that it is currently holding in storage at the instruction of the INS while the INS decides whether it should review the records to determine if any other I-20s should be pulled from the process and not returned to the school. To ensure that the 140,000 I-20s currently being held by ACS are not excessively delayed, the INS should expeditiously determine the criteria needed to assess the I-20s and complete the review process once it decides to review the I-20s.

<sup>147</sup> During our recent interviews at ACS (which occurred after the changes went into effect), we were told by some of the operators that they only processed originals. We were

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## **B. Database checks before I-539s are adjudicated**

In the INS Headquarters memorandum to the field dated March 18, 2002, the INS introduced processing changes not only for I-20s but also for the adjudication of I-539 applications. The memorandum directs that before adjudication, all I-539s must be checked against certain INS databases. As discussed previously, in the past, adjudication of I-539 change of status applications consisted primarily of a review of documents to ensure that the applicant timely filed the application and submitted the appropriate documents. No databases were required to be queried for possible derogatory information, such as a criminal history or departures since the application had been filed. The INS now requires that in every case the adjudicator must check the Nonimmigrant Information System (NIIS) and the Interagency Border Inspection System (IBIS) and that the file must reflect evidence that the check has occurred. Below we discuss each new requirement individually and our assessment of its implementation and impact on the adjudications process.

### **1. Check of NIIS database**

With respect to NIIS, adjudicators must now query NIIS for all I-539 and I-129<sup>148</sup> applications and include a copy of the printed record in the file or an indication in the file that NIIS was checked and no record was found. INS guidance also states that the I-94 admission number of the applicant must be

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concerned that this meant that the ACS operators were not aware that the service centers were now sending copies to ACS for processing. We suggested to INS Headquarters personnel that they ensure that ACS was implementing the changes that INS had announced and that ACS was not waiting for the contract modification to be put into place. INS personnel told us on April 12, 2002, that ACS was processing the copies being sent from the service centers. ACS personnel told us that they had not been notified of the change in procedures until April 8, 2002 (approximately three weeks after the changes went into effect), when a senior ACS manager called INS to find out why they were getting so many copies of the I-20.

<sup>148</sup> I-129 applications are applications used by employers seeking either an extension of stay for a previously admitted nonimmigrant on an employment-related visa or a change in status for a nonimmigrant who seeks an employment-based status. The dependents of the person holding the nonimmigrant employment-related visa who seek to change or extend their status must file I-539 applications.

entered into the “I-94 Number” field in CLAIMS prior to final adjudication. The guidance also states that if the NIIS record establishes that a departure from the United States occurred after the I-539 was filed, the I-539 application should be considered abandoned and must be denied.

We believe that requiring the adjudicator to check NIIS before approving a change of status application is a prudent step. Whether this new requirement is effective, however, depends on the extent to which NIIS data is comprehensive, accurate, and timely. A prior OIG review in September 1997 revealed that NIIS suffers from several systemic problems that limit the effectiveness of the database. See “Immigration and Naturalization Service Monitoring of Nonimmigrant Overstays,” Report Number I-97-08, September 1997. In particular, we found that information about departure records is not always entered into NIIS and that the information that is uploaded is not always accurate. We recently completed a follow-up review in which we found that the INS had not improved the collection of I-94 departure records and that NIIS data is still unreliable. See “Follow-up Report on INS Efforts to Improve the Control of Nonimmigrant Overstays,” Report Number I-2002-006, April 2002. The requirement to check NIIS will only be effective if the NIIS data is accurate.

## **2. Check of the Interagency Border Inspection System**

The INS’s March 18 memorandum requires adjudicators to check all I-539 applications through IBIS before rendering a final decision.<sup>149</sup> The memorandum also requires adjudicators to include a notation on the application with the results of the IBIS check and the date the check was performed. At the time that the March 18 memorandum was issued, adjudicators in the TSC did not have access at their workstations to IBIS and were not trained on how to use it. In the last few weeks, however, adjudicators at the TSC have been

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<sup>149</sup> After reviewing the draft report, a senior INS Headquarters official informed the OIG that service centers had been conducting IBIS checks of several types of applications, including I-539s, since January 2002 and provided the OIG with an INS Headquarters memorandum to the field dated November 15, 2001. Although the November 15 memorandum required IBIS checks on certain applications processed in the service centers, the memorandum did not include I-539 applications. The OIG confirmed with the TSC that IBIS checks on I-539 applications have been performed only in the last several weeks.

provided with user accounts on IBIS and have received training on how to use it.<sup>150</sup>

In addition to access to IBIS though, CAOs must have guidance about what to do with the information uncovered through the IBIS check. The March 18 memorandum states that “[I]n the event that the IBIS check results in a positive hit, the issue must be resolved prior to the case being approved” and “additional instructions on resolution of positive hits will follow under separate cover.” As of May 10, 2002, the INS had not issued any further instructions on how to resolve the issue. I-539 application processing has been slowed down significantly since March 18 while the service centers were waiting for access to and training on IBIS for CAOs. The processing continues to be affected while they await guidance from INS Headquarters on how to resolve cases in which a “hit” appears in IBIS. In the interim, thousands of applications are continuing to be received, and backlogs are growing.<sup>151</sup> As discussed below, with regulatory changes that will require the INS to maintain a 30-day processing time for I-539s, it is crucial for the INS to resolve the IBIS issues expeditiously.

### **3. Performance standards for CAOs**

As noted previously, service center adjudicators did not routinely check NIIS, in part because there was no requirement or practical incentive to do so. In fact, the production pressure faced by CAOs created a disincentive to checking NIIS. Requiring CAOs to now make two copies of the I-20s, to mail the school copy of the I-20, to complete a NIIS check and put a printout in the file, and to check IBIS and put a printout in the file will add to the time it takes to process each application. While each check may only take a few minutes, provided CAOs have access to everything they need (such as address labels and IBIS), adjudicators are expected to process each application in 7 to 10 minutes, and a small increase in time on each application may have a

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<sup>150</sup> In the TSC, a significant percentage of CAOs work from home, but due to security restrictions IBIS cannot be placed on their workstations at home. The INS is attempting to acquire access for CAOs who work at home.

<sup>151</sup> While I-539 applications consist of only six percent of the total applications processed by the service centers, the INS adjudicated 305,124 I-539 applications in FY 2001.

significant impact in total. If the performance ratings for CAOs do not account for the added time to process applications, CAOs will continue to have a disincentive to conduct thorough searches and follow up on possible leads.

### **III. Proposed regulatory changes**

The Department of Justice and the INS have proposed and are considering additional proposals for regulatory changes in light of the events of September 11. Below we address some of the proposals that most directly affect the INS's interactions with foreign students. The proposed regulations that we discuss reflect an important shift in philosophy in the INS's treatment of nonimmigrant students and visitors. As a practical matter, foreign students who wanted to avoid the consular process for obtaining a student visa could enter the United States through some other means and not receive close scrutiny when filing an application for a change of status. The proposed regulations appear to be aimed at more closely assessing the intent of nonimmigrants and their purposes for entering the country and providing the INS with greater control over the ability of aliens to change their nonimmigrant status. The question remains whether this change in philosophy can be effectively implemented by inspectors at ports of entry and adjudicators at the service centers.

#### **A. Proposed change: Aliens who enter the country without a student visa may not begin a course of study until their I-539 petition for change of status to student has been adjudicated favorably.**

In the past, federal regulations specifically allowed a nonimmigrant to begin taking classes before acquiring student status from the INS.<sup>152</sup> A recent interim rule eliminates this provision. The new rule provides that nonimmigrants admitted in B-1 or B-2 status after the effective date of the rule will not be permitted to enroll in school unless the INS has notified the nonimmigrants that their change of status application has been approved.

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<sup>152</sup> Section 248.1(c) of Title 8 stated: "A nonimmigrant applying for a change to classification as a student under sections 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act is not considered ineligible for such a change solely because the applicant may have started attendance at school before the application was submitted."

The previous rule avoided penalizing students and schools for INS delays in adjudication of change of status applications. Because of those delays, adjudication in many cases only ratified a change of status that had already occurred. However, mandating that a change of status application be adjudicated before a student is permitted to begin class should be accompanied by a timely decision by the INS on the application. Recognizing this, the INS has stated its commitment to making timely decisions in 30 days or less.

While this proposed regulation has been in the drafting process for the last several months, the INS has made considerable efforts toward decreasing the processing times for I-539s to 30 days. I-539s have been designated one of the “priorities” for the INS in FY 2003. In January and February 2002, service centers were reporting processing times between 17 days and slightly more than 3 months.

Although the INS recently directed significant resources toward the I-539 program and has decreased processing times significantly, we are concerned that once this current “crisis” with respect to I-539s has subsided, the processing times may rise again.<sup>153</sup> The only way to avoid an increase in processing times is for the INS to ensure that sufficient numbers of adjudicators are available to adjudicate I-539 applications and that they are given the necessary access to IBIS, training, and guidance. We are concerned that the INS will not be able to achieve such a massive and sustained change in processing.

If the INS is not able to process change of status applications timely, students may miss the start of their desired course of study. The INS then has to either authorize the students to remain in the country until the next term, which may be longer than authorized by their original admission, or require

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<sup>153</sup> We noted in a prior report that the INS sometimes resolves a crisis in one area by transferring resources from other areas. In the OIG’s report on the INS’s 1996 naturalization initiative called “Citizenship USA” (CUSA), a program that was designed to address huge backlogs in the naturalization program, we described the effect that INS’s emphasis on completion of naturalization cases had on other INS benefit programs, such as the adjustment of status program (the process through which an applicant becomes a legal permanent resident in the United States and obtains a “green card”). We found that the adjustment of status program, which had significant backlogs at the time, suffered during CUSA because of the INS’s extraordinary emphasis on naturalization.

students to depart when their original status expires (or risk being an overstay) and apply again from abroad through the Department of State. This could impose a financial hardship on some students or result in schools allowing students to start classes before they receive the I-20 notifying them the student has been approved. We believe the INS must consider how these students will be handled and what alternative arrangements will be made, rather than waiting for problems to arise and attempting to address them in an ad hoc fashion.

**B. Proposed change: A visitor entering the country must articulate reasons that would support a length of stay longer than 30 days, and if the visitor cannot the default admission period will be 30 days.**

The proposed regulations, as we understand them, would also reduce the maximum admission period for visitors from one year to six months, would eliminate the 6-month minimum admission period for B-2 visitors that currently exists, would establish a default admission period of 30 days, and would set a 6-month maximum for all extensions of B visas. These proposed changes, although not explicitly related to nonimmigrants who want to become students in the United States, will likely affect those students and change of status applications that relate to those students. Before we discuss that impact, we first address the proposed change and its implementation in the INS.

The OIG was advised that while the proposed change sets 30 days as a default for tourists, it also gives immigration inspectors at POEs the discretion to authorize a stay that is “fair and reasonable” for a period up to a maximum of six months. When immigration officers have broad discretion and little guidance on how to exercise that discretion, policies vary considerably among POEs, service centers, and district offices. Failure to provide clear and detailed guidelines to assist inspectors in exercising their discretion will likely result in authorized lengths of stay that vary considerably among POEs and may induce “forum shopping” among nonimmigrants. In addition, if the purpose of the regulation is to ensure that the majority of visitors are admitted for 30 days or less, then inspectors must be given guidance about what statements of intent will be acceptable for admitting the nonimmigrant past the 30-day default. Without sufficient guidance, a vague statement of the purpose by the visitor could be deemed acceptable and the exception would swallow the rule.

The proposed change may decrease significantly the number of foreign students who enter with visitor visas and pursue an education on a part-time

basis, since it is difficult to complete college classes or other schooling in 30-day increments. In addition, the proposed change could reduce the number of I-539s filed by nonimmigrants seeking to change their visitor status to that of students. It would be difficult for a person who entered the country with the intent of visiting temporarily to find a college or school, to apply to the school, and to be accepted during the 30-day period. A visitor in this situation would have to return home and apply for a student visa through the consular process to become a student.

Finally, according to the prefatory language to this proposed regulation, the INS implemented the 6-month minimum admission period several years ago to reduce the number of I-539s filed to obtain an extension of stay. The 30-day presumptive admission period will likely result in a significant increase in the number of I-539s filed for an extension of stay, thereby increasing the pressure on the INS to ensure that adequate resources are maintained for the I-539 program to keep processing times to a minimum.

**C. Proposed change: Require prospective foreign students to demonstrate their intent to attend school at the time they are admitted on a B-1/B-2 visa in order to be eligible later to seek a change of status to F-1 or M-1.**

As discussed in other parts of this report, when nonimmigrants enter the country, their purpose for being here is supposed to match the type of visa they hold. In other words, individuals who enter with the intent to become full-time students in the United States should obtain a student visa before coming to the United States. At the same time, the law allows nonimmigrants to come for one purpose, such as pleasure, then change their minds and decide to attend school. Also, individuals are allowed to come with the intent of visiting for the purpose of selecting a school or educational program.

According to the INS, it prefers that nonimmigrants acquire student status through the consular process in the person's home country. The Department of State is by design the principal route for aliens seeking nonimmigrant visas, and consular officials are better suited to scrutinize the alien's intentions than an inspector at a port of entry or a service center adjudicator.

The INS has therefore proposed requiring prospective students to demonstrate their intent to become students at the time they are admitted on B-1/B-2 visas, in order to be eligible to acquire a change of status. The effect

of this proposed change would be to create a new visa category for nonimmigrants entering the country as prospective students. While this proposed change would assist the INS in identifying those visitors who are likely to later file change of status applications asking to be students, it is unlikely to substantially assist in the effort to keep out aliens who are intent on avoiding the screening process provided by the State Department.

As we understand the proposed process, three scenarios are possible: (1) a foreign student is accepted to a school in the United States and obtains an M-1 or F-1 visa through a consulate outside the United States; (2) an alien enters the United States as a visitor but decides to become a student and files an application for a change of status; if the alien did not indicate upon entry that he or she might become a student, then the application would be denied; and (3) a foreign student who enters as a visitor indicates at the time of entry that he or she is a “prospective student”; if the student files a request for a change of status, it will likely be granted. With respect to this last scenario, if the goal is to ensure that most foreign students are screened by the State Department, then allowing a large number of individuals in this category would undermine this goal.<sup>154</sup>

We are unable to evaluate this proposal fully because we do not know the intent behind the proposal. Whatever the intent behind the proposal, however, the INS should define “prospective student” to achieve the intent. The INS should also decide whether aliens must submit documentation in support of their assertion that they are prospective students, such as acceptance letters or offers of scholarships, or whether something less will suffice, such as a statement that they have been accepted to a school.<sup>155</sup> Guidelines must also be

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<sup>154</sup> Another possibility is to have the State Department issue a new visa category for “prospective students” that would cover individuals who are likely to become students, but who, for various reasons, want to visit the United States before they enroll at a particular school. Visitor visas can already be noted with “prospective student,” but many people have visas that are valid for several years and might not know when they obtained the visa that they wanted to go to school in the United States. A new visa category for prospective students would ensure State Department screening and would allow true prospective students to obtain student status while avoiding the financial burden of leaving the United States after a school is selected in order to obtain a student visa.

<sup>155</sup> Although the proposed regulation states that aliens who have been accepted to a school and have an I-20 must present the I-20 to the inspector, the regulation does not state (continued)

provided to inspectors regarding issues such as whether the entering alien must volunteer the information about prospective student status or whether the inspector is required to ask the question. Even more important, for this proposed process to work at all, there must be some system in place for ensuring that the inspector's determination that the alien meets the "prospective student" definition is consistently recorded on the I-94 and for ensuring that this information is provided to the I-539 adjudicators should the prospective student later file for a change of status.<sup>156</sup>

We note that while INS officials stated that the INS prefers that nonimmigrants acquire student status by obtaining a student visa through the consular process, the law provides for several exceptions to the requirements that nonimmigrants present valid visas at each entry. For example, Canadian nationals and aliens residing permanently in Canada who are from countries deemed to have a "common nationality" with Canada are not required to present a visa when entering the United States.<sup>157</sup> According to the INS, 54 countries have a "common nationality" with Canada, including India and Pakistan. This exception means that aliens from Canada who will be students in the United States are not required to obtain or present student visas to enter the United States.<sup>158</sup>

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(continued)

what other evidence, if any, will be acceptable for aliens to establish "prospective student" status.

<sup>156</sup> The back of the I-94 arrival form has a box labeled "prospective student," which can be marked by the inspector at the time of entry. According to ACS, this information is data entered and is captured in NIIS. However, we found that adjudicators were not familiar enough with NIIS to know how to access this information.

<sup>157</sup> This exception is in addition to the INS's Visa Waiver Program, another avenue through which large numbers of foreigners enter the United States without visas. The Visa Waiver Program permits aliens from 28 countries to enter the United States without visas for business (B-1) or tourism (B-2) purposes. Aliens from countries designated as part of the Visa Waiver Program entering for the purpose of going to school full time are required to obtain a student visa.

<sup>158</sup> Schools in the United States issue I-20s to students from Canada who are accepted by the schools, and according to the INS website, Canadian students are required to present the I-20s at the border. Neither the law nor the Inspector's Field Manual, however, is clear about whether aliens from Canada who are entering the United States to attend school full

(continued)

**D. Proposed change: Require flight schools to initiate background and fingerprint checks when a student seeks to learn how to fly a plane over 12,500 pounds.**

As we understand this proposed regulation, flight schools and other providers of flight instruction will be required to initiate a background check for all students who enroll in programs to learn how to fly a plane over 12,500 pounds and that instruction cannot begin until the background check has been completed. Currently, foreign students are issued I-20s after they have been accepted to a school but before instruction begins. Once foreign students have been issued I-20s, they are eligible to apply for a student visa or a change of status. If foreign students apply for a change of status before the background check is completed, then the INS must ensure that the results of the background check are obtained *before* the application is adjudicated.

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(continued)

time are required to present an I-20 upon entry. Section 15.3(g) of the Inspector's Field Manual states: "Students or trainees who are nationals of [Canada] may be admitted upon presentation of a valid identity card and a passport (for identification purposes)." If Canadian students do not present I-20s at the border – which means school copies of I-20s are not collected and sent for data entry – the INS has no means of identifying or tracking Canadian students. Even once SEVIS is implemented and the I-20 information is directly entered into SEVIS, the INS will not be able to track information about the status of Canadian students unless they are required to present an endorsed I-20 to enter the United States on each occasion.

## **CHAPTER EIGHT**

### **RECOMMENDATIONS**

#### **I. Introduction**

Our review found that the INS functions without vital information about foreign students and nonimmigrants who have applied to change their status to that of students. Inspectors, adjudicators, and investigators are making critical decisions about aliens without having access to fundamental information that would affect their decisions. We also found that the INS has failed to adequately manage or pay sufficient attention to the foreign student program for many years. One of the factors inhibiting a coordinated approach to the foreign student program is that management of the program is fragmented. We found that responsibility for foreign students is divided among several different offices and programs in the INS and that no one person or office in the INS had a complete understanding of the requirements for foreign students and the processes through which they are permitted to enter and study in the United States. While we recognize that the INS is a large agency handling many different programs and missions, the result of this fragmentation is that there is not sufficient accountability for a program that admits approximately 500,000 aliens into the country every year.

Since September 11, 2001, the INS's need to focus attention on foreign students has changed dramatically. In the past, the INS's philosophy has strongly favored admitting foreign students and viewed them as relatively low risk. As a result, INS procedures allowed students to avoid screening processes and to remain in the country essentially unmonitored. Since September 11, however, there appears to have been a shift in philosophy regarding foreign students. Tighter regulatory controls have been proposed to make it more difficult to achieve student status and to scrutinize persons entering the country who might later attempt to become students. Also Congress has mandated that the INS implement its automated tracking system for students and schools, SEVIS, by January 1, 2003. And, since March 15, 2002, the INS has implemented procedural changes that will result in greater scrutiny of change of status applications for persons who want to become students. Despite these major changes affecting the foreign student program since September 11, however, the INS continues to operate the program without an overall plan for coordinating the various parts of the program.

## **II. Recommendations**

In this chapter, we make numerous programmatic recommendations that we believe will improve the foreign student program and increase the INS's knowledge about foreign students. Before we discuss these recommendations, however, we set forth our recommendations concerning the INS's management of the foreign student program.

### **A. Management of the foreign student program**

Our experience with the INS is that changes are sometimes made to fix one aspect of a program that is in crisis but that insufficient attention is paid to the consequences for other parts of the program. The fragmentation of management over the foreign student program contributes to that result. We believe that the INS should consider whether a foreign student program manager should be appointed to coordinate, and be accountable for, immigration issues affecting foreign students. We recognize that the INS has many other nonimmigrant categories in addition to students, and it may not be feasible to have a program manager for only foreign students. But the policy and practices affecting foreign students is a critical challenge facing the INS. Currently, those issues are handled by many different offices within the INS, resulting in inconsistent policies, lack of accountability for the program, and failure to carefully and systematically consider the impact of changes on the program.

### **B. Recommendations that affect all foreign students**

#### **1. Implementation of SEVIS**

The INS plans to implement SEVIS by the end of January 2003. In order for SEVIS to be successful, the INS should ensure that all schools are reviewed and approved before allowing the schools access to SEVIS. Failure to do so will, among other consequences, result in the new SEVIS system containing the same flawed, inaccurate data as its current system. Yet, the INS is woefully behind in accomplishing this mammoth task. Given the improbability that it will be completed by January 2003 (since the required proposed rule change has not yet been published), the INS should decide soon on an alternative plan, including determining how it will proceed in January 2003 if schools are not re-certified, a reasonable time schedule for re-certifying the schools, and an implementation plan for achieving the timetable. Regardless of

the time pressure, we believe that the INS should not proceed without reviewing all of the schools currently authorized to issue I-20s.

Any re-certification plan must also resolve who will be responsible for conducting the re-certifications, provide adequate written guidelines on conducting the re-certifications, and provide adequate training to those responsible for performing the re-certifications. We believe that the re-certification process should include site visits and follow-up on questionable information submitted by schools.

Sufficient resources must be devoted to the re-certification process. We believe that the INS should establish a unit within each district office responsible for conducting on-site verifications of the INS-approved schools. Full-time schools officers will be needed, instead of personnel who have the responsibility as a collateral duty. These units could conduct the initial certifications (in connection with the transfer to SEVIS) and re-certifications that should be established at regular intervals thereafter. The INS must continue to monitor and review the schools, since schools lose accreditation, change their objectives, and sometimes engage in fraud. The INS should ensure that audits are conducted of approved schools to determine whether proper internal controls are in place and that data is being entered into SEVIS completely, accurately, and timely.

In addition, the INS should decide what office or division will be responsible for analyzing the data that is collected in SEVIS. To fully use SEVIS's capabilities, the INS needs to assign personnel and establish policies and procedures to take advantage of this analytic function. We believe full-time field positions in INS adjudications, intelligence, and investigations will also be necessary to monitor foreign student and school activities to identify those students who are no longer enrolled or who may be engaging in fraud.<sup>159</sup> The information is only useful if it used by the INS.

To ensure that adequate personnel are available to devote to re-certifying and monitoring INS-approved schools and foreign students, we recommend

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<sup>159</sup> Congress, through the Enhanced Border Security and Visa Entry Reform Act of 2001, has mandated that the INS increase the number of investigative and associated support personnel. The Reform Act requires the addition of at least 1,000 investigators and support personnel over the next five years.

that the INS establish fee-based positions funded out of the processing fee that will eventually be charged to foreign students.

The INS must also develop a plan for training both INS employees and school employees on how to use SEVIS. Having all of the schools certified and approved to use SEVIS will not be effective without adequate training. The INS should develop a timetable for implementing training and an implementation plan for carrying out the training.

SEVIS cannot work unless the necessary offices and personnel are connected to SEVIS, including service centers, POEs, district offices, and consular posts. Without these connections, information about foreign students and schools will be incomplete since changes of status, visa issuances, employment authorizations, reinstatements, and entries and exits will not be captured. The INS should devote the resources necessary to ensure that all offices are connected to and are able to use SEVIS as quickly as possible.

## **2. Defining “prospective student”**

The INS is proposing regulations that would require visitors to have declared that they are prospective students at the time they entered the country in order to be eligible to change their status at a later date. For this regulation to be meaningful, the INS must first determine what the regulation is designed to achieve. If the objective is to reduce the potential for persons to avoid the State Department screening process by entering as a visitor and then changing to a status of longer duration, the INS must evaluate what requirements will accomplish that objective and, just as important, the logistics of the new process. The INS, working with the State Department, should also define “prospective student.” The INS should decide whether aliens will be required to submit documentation in support of their assertion that they are a prospective student, such as acceptance letters or offers of scholarships, or whether something less will suffice, such as a statement that they have not yet applied to any schools but plan to after visiting several. It is equally important for the INS to ensure that change of status adjudicators in the service centers are aware of how to access the “prospective student” information recorded in NIIS.

## **3. Capturing information about part-time students**

The law as it currently stands allows visitors to attend classes on a part-time basis. The INS, however, does not currently collect information about

these students or otherwise monitor them, nor does it plan to collect this information once SEVIS is implemented. Schools that offer courses on a part-time basis will not be included in SEVIS unless they also have full-time programs and want to be certified to accept foreign students. These include schools such as flight schools and trucking schools, which often do not provide the minimum number of course hours per week that would place the school under the INS's monitoring system for full-time students.

To increase the effectiveness of its monitoring of and collecting information about foreign students, part-time students should also be monitored. While we recognize that collecting information about every visitor who enrolls in a class or a short course of study would impose a significant burden on the INS, we believe that the INS should take steps to determine what information about these students and schools should be collected.

**C. Recommendations that affect nonimmigrants who wish to change their status to that of a student**

**1. Adequate resources to ensure processing of I-539 applications in 30 days**

The INS must ensure that it devotes the resources necessary to maintain a fast processing time for I-539 change of status applications in order to avoid penalizing foreign students. Equally important, however, the INS must determine how it will handle nonimmigrants who have applied to become students but whose applications have not been adjudicated prior to the start of their classes. The INS should advise I-539 applicants for student status of the requirement that their applications must be completed prior to beginning school and also advise them of the procedure to be followed if the INS has not completed their application prior to the start of school. This procedure should also be communicated to the schools.

Currently, the INS has no formal procedure for schools to contact the service centers about pending I-539 applications. While some service centers designate an employee as a point of contact, it is a collateral duty and is not clearly defined. The INS should, as part of its overall management of foreign students, designate a person or an office within the service centers with the responsibility of communicating with schools and establish a procedure for accomplishing this objective.

## **2. IBIS checks**

The INS should develop clear and specific guidance for service center adjudicators on how information from IBIS checks will affect the adjudication decision, including information about previous overstays, immigration violations and criminal histories. The adjudicator should be informed about what steps to take if it is not clear that the applicant is the subject of the “hit” or “lookout” in IBIS.

### **D. Recommendations that affect immigration inspectors**

#### **1. Abandonment of I-539 applications**

Aliens who have applied for change of status or upon whom student status has been conferred are deemed to have abandoned their application or their student status when they leave the country. In other words, they are not permitted to return for the primary purpose of attending school without getting a student visa from a United States consulate. Yet, primary inspectors at the POEs currently have no way of determining whether aliens are improperly using a B-1/B-2 visa as a means of avoiding the State Department process, unless aliens volunteer to the inspectors that they have applied for or received a change of status.

Accordingly, the INS should ensure that primary inspectors have adequate information to verify the alien’s statement of intent to the inspector. SEVIS should be designed so that the primary inspector will be notified as part of the routine check performed at the POEs that an alien has filed an I-539 to become a student or has already been conferred student status through the I-539 process. A secondary inspector can then evaluate whether the student is improperly attempting to enter the country using a B-1/B-2 visa or whether he or she is no longer attending school and is perhaps a legitimate visitor.

We also believe that the instructions to the I-539 application should inform applicants that if they leave the country while their application is pending, they will be considered to have abandoned the application. Likewise, the instructions should inform the applicants that once the new status is conferred, they lose that status if they leave the country and will be required to obtain student visas to re-enter.

## **2. I-193 waivers**

The INS should restate its policy with respect to I-193 waivers and ensure that primary inspectors understand and consistently enforce the waiver policy and its limitations. Although currently all waivers must be approved by an assistant district director, the deputy district director or the district director, this policy could be relaxed in the future. Once this occurs, the Inspections Division in the district offices will again be responsible for issuing and deciding waivers and will need to be better informed about the circumstances under which these waivers are acceptable. Clear guidance should be re-issued to inspectors about what is considered an emergency that can result in the issuance of a waiver.

### **E. General recommendations**

#### **1. Performance standards for CAOs**

The INS's current performance standards for CAOs were prepared when changes in nonimmigrant classifications and extensions of stays were adjudicated based on a paper review designed to ensure that proper documentation had been properly filed. The INS is now requiring IBIS checks for all I-539 applications and several other applications, which suggests a shift toward more of a screening process for certain types of benefits rather than simply eligibility based on meeting documentary requirements. As a result, the INS should also change CAOs' performance standards to allow more time to review files and seek additional information. At a minimum, in light of the new processing requirements described in this report, we recommend that the INS reconsider the performance standards for CAOs and adjust the standards to accommodate the additional time that will be spent by CAOs implementing these new processing requirements.

#### **2. INS policies**

We have noted in this report and in other reports problems with INS policies not being known, written, widely disseminated, or uniformly enforced. Although the INS's field manuals are a logical repository for policies and procedures, the Inspector's Field Manual and the Adjudicator's Field Manual are not comprehensive or complete. In addition, we found that adjudicators and inspectors are not made aware of changes to the manuals, if they are even aware of them and what they contain. Policies distributed via memorandum to

the field often never reach line inspectors and adjudicators. As a result, field offices develop their own practices that are sometimes inconsistent with INS policy or the law.

The INS's systems for disseminating policy memoranda and changes and for ensuring that line employees become aware of and are required to enforce these policies needs improvement. We recommend that the INS expeditiously complete and update its field manuals. In addition, it should implement a more effective system for disseminating policies and procedures other than sending the documents to the head of a field office. Only if the INS has a system in place that ensures that policies and changes are received and understood can employees be held accountable for not following them.

In order to assist our tracking and monitoring of these recommendations, we set them out numerically in the Appendix at A-12.

## **CHAPTER NINE**

### **CONCLUSION**

The INS suffered a firestorm of criticism when it was disclosed that six months after the September 11 terrorist attacks Huffman Aviation received forms notifying it that terrorists Mohamed Atta and Marwan Alshehhi had received approval to change their status to that of students. Although the forms were only a notification of a decision that had been made several months before September 11, the mailing of these forms raised troubling questions about the INS's handling of Atta's and Alshehhi's change of status applications. More importantly, it raised serious concerns about the INS's ability to monitor and track foreign students in the United States.

The OIG therefore expended significant resources to review the circumstances surrounding the sending of the forms to Huffman Aviation, including the source of the delay and the failure to stop delivery of the forms after September 11. We also examined the INS's admissions of Atta and Alshehhi into the United States, and we expedited our broader review of the INS's tracking and monitoring of foreign students who come to the United States, including SEVIS, the INS's new computerized student tracking system.

With regard to all but one of Atta's and Alshehhi's entries into the United States, we concluded that the evidence does not show that the inspectors who admitted them acted in violation of INS policies and practices. We were unable to reach any definitive conclusion whether Atta's admission in January 2001 was improper, given the limited record relating to the admission and the inspector's inability to remember the specifics of what was said at the time. We found that before September 11, the INS did not closely scrutinize aliens entering the country to become students and did not uniformly require foreign students to present the required documentation before entering the United States.

Our review of the INS's processing of Atta's and Alshehhi's change of status applications revealed significant problems. First, the INS did not handle their applications in a timely way, taking more than 10 months before adjudicating the applications. As a result, Atta's and Alshehhi's applications were not adjudicated until well after they had finished their flight training course. Second, the INS adjudicator who approved their applications did so

without adequate information, including the fact that Atta and Alshehhi had left the country two times after filing their change of status applications, which meant they had abandoned the applications. Even after approval of the applications, Huffman Aviation was not notified for seven months because the INS allowed an INS contractor to wait 180 days before mailing notification forms to schools. We found that the INS failed to adequately supervise the contract and was inattentive to the contract's requirements.

We are critical of the INS's failure to alert the FBI to the existence of Atta's and Alshehhi's I-20 forms after the September 11 attacks. Although the INS quickly determined on September 11 that it had already approved Atta's and Alshehhi's change of status applications and it gathered the change of status files for the FBI, no one in the INS located – or even considered – the notification forms that were being processed by the INS contractor. As a result, the forms continued to be processed and were later routinely mailed to Huffman Aviation. In our judgment, this was a widespread failure by many individuals in the INS.

Atta's and Alshehhi's case also highlights important weaknesses in the INS's handling of foreign students. Historically, the INS has devoted insufficient attention to foreign students, and its current, paper-based tracking system is inefficient, inaccurate, and unreliable. SEVIS, the new Internet-based system the INS is developing, has the potential to dramatically improve the INS's monitoring of foreign students. But we found that it will not solve all the problems in the INS's monitoring system.

Unless the INS devotes sufficient resources and effort to effectively implement and use the SEVIS system, many problems will continue to exist. Among other things, the INS must ensure that it fully reviews the schools certified to enroll foreign students, make certain that accurate and timely information is entered into SEVIS, provide and enforce clear guidance for INS officers and schools about their responsibilities and the procedures related to foreign students, require that school officials and INS employees are trained properly on these requirements and procedures, and ensure that information in SEVIS about schools and students is effectively used by the INS to detect and deter abuse.

In this report, we offer 24 recommendations to help address the problems that Atta's and Alshehhi's cases highlighted and that our review of the INS

foreign student program revealed. We believe that these recommendations will improve the usefulness of SEVIS and help address the serious deficiencies we found in this review. While many of these recommended changes will require additional resources, we believe these efforts are necessary for the INS to improve its handling and monitoring of foreign students.

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Glenn A. Fine  
Inspector General

Admission Number

*Welcome to the United States*

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**I-94 Arrival/Departure Record - Instructions**

This form must be completed by all persons except U.S. Citizens, returning resident aliens, aliens with immigrant visas, and Canadian Citizens visiting or in transit.

Type or print legibly with pen in ALL CAPITAL LETTERS. Use English. Do not write on the back of this form.

This form is in two parts. Please complete both the Arrival Record (Items 1 through 13) and the Departure Record (Items 14 through 17).

When all items are completed, present this form to the U.S. Immigration and Naturalization Service Inspector.

**Item 7** - If you are entering the United States by land, enter **LAND** in this space. If you are entering the United States by ship, enter **SEA** in this space.

Form I-94 (04/06/00)Y

OMB No. 1115-0077

Admission Number

\_\_\_\_\_

**I-94  
Arrival Record**

1. Family Name	
2. First (Given) Name	3. Birth Date (Day/Mo/Yr)
4. Country of Citizenship	5. Sex (Male or Female)
6. Passport Number	7. Airline and Flight Number
8. Country Where You Live	9. City Where You Boarded
10. City Where Visa was Issued	11. Date Issued (Day/Mo/Yr)
12. Address While in the United States (Number and Street)	
13. City and State	

**Authority**

The authority to collect this information is contained in Title 8 of the United States Code.

**Paperwork Reduction Act Notice.** A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The estimated average time to complete and file this application is 4 minutes per application. If you have comments regarding this form, you can write to the Immigration and Naturalization Service, HQPDI, 425 I Street N.W., Room 4307r, Washington DC 20536; OMB No. 1115-0077. **DO NOT MAIL YOUR COMPLETED APPLICATION TO THIS ADDRESS.**

Departure Number

OMB No. 1115-0077

\_\_\_\_\_

**I-94  
Departure Record**

14. Family Name	
15. First (Given) Name	16. Birth Date (Day/Mo/Yr)
17. Country of Citizenship	

See Other Side

STAPLE HERE

Statistics provided by JFK inspections personnel reflect the drastic recent decline in nonimmigrant waivers for air and sea passengers after September 11, 2001:

<b>Month</b>	<b>JFK Airport</b>	<b>JFK Seaport</b>
10/00	65	35
11/00	84	0
12/00	116	44
01/01	152	63
02/01	126	72
03/01	111	38
04/01	130	64
05/01	122	58
06/01	132	58
07/01	141	44
08/01	128	34
09/01	136	22
10/01	54	0
11/01	40	0
12/01	23	0
01/02	7	1
02/02	0	0
03/02	0	0

**Purpose Of This Form.**

This form is for a nonimmigrant to apply for an extension of stay or change to another nonimmigrant status. However, an employer should file Form I-129 to request an extension/change to E, H, L, O, P, Q or R status for an employee or prospective employee. Dependents of such employees should file for an extension/change of status on this form, not on Form I-129. This form is also for a nonimmigrant F-1 or M-1 student to apply for reinstatement.

This form consists of a basic application and a supplement to list co-applicants.

**Who May File.**

**For extension of stay or change of status.**

If you are a nonimmigrant in the U.S., you may apply for an extension of stay or a change of status on this form except as noted above. However, you may not be granted an extension or change of status if you were admitted under the Visa Waiver Program or if your current or proposed status is as:

- an alien in transit (C) or in transit without a visa (TWOV);
- a crewman (D); or
- a fiancé(e) or dependent of a fiancé(e) (K).

There are additional limits on change of status.

- A J-1 exchange visitor whose status was for the purpose of receiving graduate medical training is ineligible for change of status.
- A J-1 exchange visitor subject to the foreign residence requirement who has not received a waiver of that requirement, is only eligible for a change of status to A or G.
- An M-1 student is not eligible for a change to F-1 status, and is not eligible for a change to any H status if training received as an M-1 student helped him/her qualify for the H status.
- You may not be granted a change to M-1 status for training to qualify for H status.

**For F-1 or M-1 student reinstatement.** You will only be considered for reinstatement if you establish when filing this application:

- that the violation of status was solely due to circumstances beyond your control or that failure to reinstate you would result in extreme hardship;
- you are pursuing, or will pursue, a full course of study;
- you have not been employed off campus without authorization or, if an F-1 student, that your only unauthorized off-campus employment was pursuant to a scholarship, fellowship, or assistantship, or did not displace a U.S. resident; and
- you are not in deportation proceedings.

**Multiple Applicants.**

You may include your spouse and your unmarried children under age 21 as co-applicants in your application for the same extension or change of status if you are all in the same status now or they are all in derivative status.

**General Filing Instructions.**

Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If the answer is "none," please so state. If you need extra space to answer any item, attach a sheet of paper with your name and your alien registration number (A#), if any, and indicate the number of the item to which the answer refers. Your application must be filed with the required Initial Evidence. Your application must be properly signed and filed with the correct fee. If you are under 14 years of age, your parent or guardian may sign your application.

**Copies.** If these instructions state that a copy of a document may be filed with this application and you choose to send us the original, we may keep that original for our records.

**Translations.** Any foreign language document must be accompanied by a full English translation which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate from the foreign language into English.

**Initial Evidence.**

**Form I-94, Nonimmigrant Arrival-Departure Record.** You must file your application with the original Form I-94, Nonimmigrant Arrival/Departure Record, of each person included in the application, if you are filing for:

- an extension as a B-1 or B-2, or change to such status;
- reinstatement as an F-1 or M-1 or filing for change to F or M status; or
- an extension as a J, or change to such status.

In all other instances, file this application with a copy of the Form I-94 of each person included in the application.

If the required Form I-94 or required copy cannot be submitted, you must file Form I-102, Application for Replacement/Initial Nonimmigrant Arrival/Departure Document, with this application.

**Valid Passport.** A nonimmigrant who is required to have a passport to be admitted must keep that passport valid during his/her entire nonimmigrant stay. If a required passport is not valid when you file this application, submit an explanation with your application.

**Additional Initial Evidence.** An application must also be filed with the following evidence.

- If you are filing for an extension/change of status as the dependent of an employee who is an E, H, L, O, P, Q or R nonimmigrant, this application must be filed with:
  - the petition filed for that employee or evidence it is pending with the Service; or
  - a copy of the employee's Form I-94 or approval notice showing that he/she has already been granted status to the period requested in your application.
- If you are requesting an extension/change to A-3 or G-5 status, this application must be filed with:
  - a copy of your employer's Form I-94 or approval notice demonstrating A or G status;
  - an original letter from your employer describing your duties and stating that he/she intends to personally employ you; and
  - an original Form I-566, certified by the Department of State, indicating your employer's continuing accredited diplomatic status.
- If you are filing for an extension/change to other A or G status, you must submit Form I-566, certified by the Department of State to indicate your accredited diplomatic status.
- If you are filing for an extension/change to B-1 or B-2 status, this application must be filed with a statement explaining, in detail:
  - the reasons for your request;
  - why your extended stay would be temporary including what arrangement you have made to depart the U.S.; and
  - any effect of the extended stay on your foreign employment and residency.
- If you are requesting an extension/change to F-1 or M-1 student status, this application must be filed with an original Form I-20 issued by the school which has accepted you. If you are requesting reinstatement to F-1 or M-1 status, you must also submit evidence establishing that you are eligible for reinstatement.
- If you are filing for an extension/change to I status, this application must be filed with a letter describing the employment and establishing that it is as the representative of qualifying foreign media.
- If you are filing for an extension/change to J-1 exchange visitor status, this application must be filed with an original Form IAP-66 issued by your program sponsor.
- If you are filing for an extension/change to N-1 or N-2 status as the parent or child of an alien admitted as a special immigrant under section 101(a)(27)(H), this application must be filed with a copy of that person's alien registration card.

**When To File.**

You must submit an application for extension of stay or change of status before your current authorized stay expires. We suggest you file at least 45 days before your stay expires, or as soon as you determine you need to change status. Failure to file before the expiration date may be excused if you demonstrate when you file the application:

- the delay was due to extraordinary circumstances beyond your control;
- the length of the delay was reasonable;
- that you have not otherwise violated your status;
- that you are still a bona fide nonimmigrant; and
- that you are not in deportation proceedings

**Where To File.**

File this application at your local INS office if you are filing:

- for an extension as a B-1 or B-2, or change to such status;
- for reinstatement as an F-1 or M-1 or filing for change to F or M status; or
- for an extension as a J, or change to such status.

In all other instances, file your application at an INS Service Center, as follows:

If you live in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, or West Virginia, mail your application to: USINS Eastern Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your application to: USINS Southern Service Center, P.O. Box 152122, Dept. A, Irving, TX 75015-2122.

If you live in Arizona, California, Guam, Hawaii, or Nevada, mail your application to: USINS Western Service Center, P.O. Box 30040, Laguna Niguel, CA 92607-0040.

If you live elsewhere in the United States, mail your application to: USINS Northern Service Center, 100 Centennial Mall North, Room, B-26, Lincoln, NE 68508.

**Fee.**

The fee for this application is \$70.00 for the first person included in the application, and \$10.00 for each additional person. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH.

All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of \$5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

**Processing Information.**

**Acceptance.** Any application that is not signed or is not accompanied by the correct fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. An application is not considered properly filed until accepted by the Service.

**Initial processing.** Once the application has been accepted, it will be checked for completeness. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your application.

**Requests for more information or interview.** We may request more information or evidence or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

**Decision.** An application for extension of stay, change of status, or reinstatement may be approved in the discretion of the Service. You will be notified in writing of the decision on your application.

**Penalties.**

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

**Privacy Act Notice.**

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1154, and 1256. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

**Paperwork Reduction Act Notice.**

We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is as follows: (1) 10 minutes to learn about the law and form; (2) 10 minutes to complete the form; and (3) 25 minutes to assemble and file the application; for a total estimated average of 45 per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0093, Washington, D.C. 20503.

**Mailing Label--Complete the following mailing label and submit this page with your application if you are required to submit your original Form I-94.**

**Name and address of applicant**

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Street

\_\_\_\_\_  
 City, State, & Zip Code

Your I-94 Arrival-Departure Record is attached. It has been amended to show the extension of stay/change of status granted.

**START HERE - Please Type or Print**

**Part 1. Information about you.**

Family Name	Given Name	Middle Initial
Address - In Care of:		
Street # and Name		Apt. #
City	State	
Zip Code		
Date of Birth (month/day/year)	Country of Birth	
Social Security # (if any)	A# (if any)	
Date of Last Arrival into the U.S.	I-94#	
Current Nonimmigrant Status	Expires on (month/day/year)	

**Part 2. Application Type. (See instructions for fee.)**

1. I am applying for: (check one)
- a.  an extension of stay in my current status
  - b.  a change of status. The new status I am requesting is: \_\_\_\_\_
2. Number of people included in this application: (check one)
- a.  I am the only applicant
  - b.  Members of my family are filing this application with me. The Total number of people included in this application is \_\_\_\_\_ (complete the supplement for each co-applicant)

**Part 3. Processing information.**

1. I/We request that my/our current or requested status be extended until (month/day/year) \_\_\_\_\_
2. Is this application based on an extension or change of status already granted to your spouse, child or parent?  
 No  Yes (receipt # \_\_\_\_\_)
3. Is this application being filed based on a separate petition or application to give your spouse, child or parent an extension or change of status?  
 No  Yes, filed with this application  Yes, filed previously and pending with INS
4. If you answered yes to question 3, give the petitioner or applicant name:  
\_\_\_\_\_
- If the application is pending with INS, also give the following information.  
Office filed at \_\_\_\_\_ Filed on \_\_\_\_\_ (date)

**Part 4. Additional information.**

1. For applicant #1, provide passport information:

Country of issuance	Valid to: (month/day/year)
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2. Foreign address:

Street # and Name	Apt#
City or Town	State or Province
Country	Zip or Postal Code

**FOR INS USE ONLY**

Returned	Receipt
Date _____	
Resubmitted	
Date _____	
Reloc Sent	
Date _____	
Reloc Rec'd	
Date _____	
Date _____	
<input type="checkbox"/> Applicant interviewed	
<input type="checkbox"/> Extension Granted to (date): _____	
<input type="checkbox"/> Change of Status/Extension Granted New Class: _____ To (date): _____	
If denied:	
<input type="checkbox"/> Still within period of stay	
<input type="checkbox"/> W/D to: _____	
<input type="checkbox"/> S/D to: _____	
<input type="checkbox"/> Place under docket control	
Remarks	
Action Block	
<b>To Be Completed by Attorney or Representative, if any</b>	
<input type="checkbox"/> Fill in box if G-28 is attached to represent the applicant	
VOLAG# _____	
ATTY State License # _____	

**Part 4. Additional Information. (continued)**

3. Answer the following questions. If you answer yes to any question, explain on separate paper.	Yes	No
a. Are you, or any other person included in this application, an applicant for an immigrant visa or adjustment of status to permanent residence?		
b. Has an immigrant petition ever been filed for you, or for any other person included in this application?		
c. Have you, or any other person included in this application ever been arrested or convicted of any criminal offense since last entering the U.S.?		
d. Have you, or any other person included in this application done anything which violated the terms of the nonimmigrant status you now hold?		
e. Are you, or any other person included in this application, now in exclusion or deportation proceedings?		
f. Have you, or any other person included in this application, been employed in the U.S. since last admitted or granted an extension or change of status?		

If you answered YES to question 3f, give the following information on a separate paper: Name of person, name of employer, address of employer, weekly income, and whether specifically authorized by INS.

If you answered NO to question 3f, fully describe how you are supporting yourself on a separate paper. Include the source and the amount and basis for any income.

**Part 5. Signature.** Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.

I certify under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature	Print your name	Date
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**Please Note:** If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you cannot be found eligible for the requested document and this application will have to be denied.

**Part 6. Signature of person preparing form if other than above. (Sign below)**

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date
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Firm Name  
and Address

(Please remember to enclose the mailing label with your application)

### Supplement-1

Attach to Form I-539 when more than one person is included in the petition or application. (List each person separately. Do not include the person you named on the form).

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
<b>IF IN THE U.S.</b>	Date of Arrival (month/day/year)	I-94#	
	Current Nonimmigrant Status:	Expires on (month/day/year)	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
<b>IF IN THE U.S.</b>	Date of Arrival (month/day/year)	I-94#	
	Current Nonimmigrant Status:	Expires on (month/day/year)	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
<b>IF IN THE U.S.</b>	Date of Arrival (month/day/year)	I-94#	
	Current Nonimmigrant Status:	Expires on (month/day/year)	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
<b>IF IN THE U.S.</b>	Date of Arrival (month/day/year)	I-94#	
	Current Nonimmigrant Status:	Expires on (month/day/year)	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
<b>IF IN THE U.S.</b>	Date of Arrival (month/day/year)	I-94#	
	Current Nonimmigrant Status:	Expires on (month/day/year)	
Country where passport issued	Expiration Date (month/day/year)		
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
<b>IF IN THE U.S.</b>	Date of Arrival (month/day/year)	I-94#	
	Current Nonimmigrant Status:	Expires on (month/day/year)	
Country where passport issued	Expiration Date (month/day/year)		

This page must be completed and signed in the U.S. by a designated school official.

1.	Family name (surname): _____
	First (given) name (do not enter middle name): _____
	Country of birth: _____ Date of birth (mo./day/year): _____
	Country of citizenship: _____ Admission number (complete if known): _____
2.	School (school district) name: _____
	School official to be notified of student's arrival in U.S. (Name and Title): _____
	School address (include zip code): _____
	School code (include 3-digit suffix, if any) and approval date: _____ 214F _____ Approved on _____

For Immigration Only Use	
Visa issuing post	Date visa issued
Reinstated, extension granted to:	

3. This certificate is issued to the student named above for:  
*(check and fill out as appropriate)*
- a.  Initial attendance at this school.
  - b.  Continued attendance at this school.
  - c.  School transfer.  
Transferred from \_\_\_\_\_
  - d.  Use by dependents for entering the United States.
  - e.  Other \_\_\_\_\_
4. Level of education the student is pursuing or will pursue in the United States: *(Check only one)*
- a.  High school    b.  Other vocational school
5. The student named above has been accepted for a full course of study at this school, majoring in \_\_\_\_\_  
 The student is expected to report to the school not later than (date) \_\_\_\_\_ and complete studies not later than (date) \_\_\_\_\_ the normal length of study is \_\_\_\_\_
6.  English proficiency is required:
- The student has the required English proficiency.
  - The student is not yet proficient, English instructions will be given at the school.
  - English proficiency is not required because \_\_\_\_\_
7. This school estimates the student's average costs for an academic term of \_\_\_\_\_ (up to 12) months to be:
- a. Tuition and fees                    \$ \_\_\_\_\_
  - b. Living expenses                    \$ \_\_\_\_\_
  - c. Expenses of dependents            \$ \_\_\_\_\_
  - d. Other (specify):                    \$ \_\_\_\_\_
- Total \$ \_\_\_\_\_
8. This school has information showing the following as the student's means of support, estimated for an academic term of \_\_\_\_\_ months (Use the same number of months given in item 7).
- a. Student's personal funds            \$ \_\_\_\_\_
  - b. Funds from this school  
*(specify type):*                            \$ \_\_\_\_\_
  - c. Funds from another source  
*(specify type and source):*            \$ \_\_\_\_\_
- Total \$ \_\_\_\_\_
9. Remarks: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. School Certification: I certify under penalty of perjury that all information provided above in items 1 through 8 was completed before I signed this form and is true and correct; I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts or other records of courses taken and proof of financial responsibility which were received at the school prior to the execution of this form; the school has determined that the above named student's qualifications meet all standards for admission to the school; the student will be required to pursue a full course of study as defined by 8 CFR 214.2(f)(6); I am a designated official of the above named school and I am authorized to issue this form.

Signature of designated school official:	Name of designated school official & title (print or type)	Date and place issued (city and state)
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11. Student Certification: I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay as specified on page 2. I certify that all information provided on this form refers to me and is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on item 2 of this form. I also authorized the named school to release any information from my records which is needed by the INS pursuant to 8 CFR 214.3(g).

Signature of student:	Name of student (print or type):	Date
Signature of parent or guardian (if student is under 18):	Name of parent or guardian (print or type):	Date
Address of parent or guardian: _____	(street) _____ (city) _____ (state or province) _____	(county) _____

For official use only Microfilm Index Number
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## INSTRUCTIONS TO STUDENTS

**FORM I-20M-N/20ID COPY.** The first time you enter the United States, you must present a Form I-20M-N/20ID Copy. It will be returned to you enclosed with admission number. You must have your Form I-20ID Copy (pages 3 and 4 of Form I-20M-N) with you at all times. You must not surrender it when you leave the United States. Failure to have it with you when you apply to reenter the United States will delay your entry into the United States. (If you lose your Form I-20ID Copy, you must request a new one, on Form I-101, from the Immigration and Naturalization Service office having jurisdiction over the school you were last authorized to attend.)

**ADMISSION.** You must give this Form (I-20 M-N) to the American consular officer at the time you apply for a visa (unless you are exempt from visa requirements), and to immigration officers with evidence of ability to support yourself while pursuing a full course of study when you arrive in the United States. If you are exempt from visa requirements, and you are applying for admission to the United States as an M-1 student, you must give the immigration officer this form and evidence of your ability to support yourself while pursuing a full course of study.

**SCHOOL.** If you are applying for entry to the United States for the first time after being issued an M-1 visa, you will not be admitted unless you plan to attend the school specified in that visa. If, before you enter the United States, you decide to attend another school, you will present an I-20M-N from the new school to an American consular officer to have that school specified in your visa.

**EMPLOYMENT.** You are not permitted to work except for practical training or to engage in business. You may apply for permission to work for practical training only after completing the educational program. Your alien spouse or child (M-2 classification) may not work in the United States.

**PERIOD OF STAY.** You are permitted to remain in the United States only while maintaining nonimmigrant student status. You must also maintain a valid passport. You may not stay longer than authorized on your Form I-20ID Copy unless you apply to the Immigration and Naturalization Service (on Form I-538 accompanied by my Form I-20ID Copy) for an extension, between 15 and 60 days before the date that your authorized stay expires. You may stay while the application is being processed and if it is approved, until the expiration of the extension.

**SCHOOL TRANSFER.** You will not be granted permission to transfer to another school within six months of the date you first become an M-1 student, unless you are unable to remain at the school to which you are first admitted due to circumstances beyond your control. If you want to transfer to another school, you must apply on Form I-538 accompanied by your Form I-20ID Copy. The application must be submitted to the Immigration and Naturalization Service office having jurisdiction over the school from which you wish to transfer. Sixty days after filing your application, you may attend the new school subject to approval or denial of your application. Your application will be denied, however, if you have not been taking a full course of study at the school you were last authorized to attend.

**EDUCATIONAL OBJECTIVE.** You are not permitted to change your educational objective.

**REENTRY.** If you want to reenter the United States as a nonimmigrant student after a temporary absence, you must be in possession of the following: (1) a valid student visa; (2) a valid passport and either a new Form I-20 M-N or your I-20ID Copy (pages 3 & 4 of the Form I-20 M-N) properly endorsed for reentry if the information on the I-20 ID Copy form is current.

**NOTICE OF ADDRESS.** If you move, you must submit a notice within 10 days of your change of address to the Immigration and Naturalization Service on Form AR-11 (available at any INS office).

**ARRIVAL/DEPARTURE.** When you depart from the United States, you must give your "Arrival/Departure Record" (Form I-94) to a representative of the steamship or airline if you leave via a seaport or airport, to a Canadian immigration officer if you leave across the Canadian border, or to a United States immigration officer if you leave across the Mexican border. However, you may keep your I-94 for reentering United States from Mexico or Canada, if you return to the U.S. within 30 days.

**PENALTY.** If you do not register at the school named in your Form I-20M-N or if you stop attending school, or take less than a full course of study, or accept unauthorized employment, you fail to maintain your status and may be deported from the United States.

## INSTRUCTIONS TO THE SCHOOL

Failure to comply, the law provides severe criminal penalties for you and your school for failure to comply with the regulations and instructions governing issuance of this form. Failure to comply with 8CFR 214.3(K) may subject you and your school to criminal prosecution. If you issue this form improperly, provide false information, or fail to submit required reports, the Immigration and Naturalization Service may withdraw its approval of your school for attendance by nonimmigrant students.

## It Is Your Responsibility:

- A. To complete Page 1 for any alien you have accepted for a full course of study in your school, if that person:
  - (1) Intends to apply for admission to the United States as a nonimmigrant under Section 101(a)(15)(M)(i) of the Immigration and Nationality Act (M-1 classification);
  - (2) Is in the United States as a (M-1) nonimmigrant and has applied for transfer to your school; or
  - (3) Is in the United States and will apply to change his/her nonimmigrant classification to M-1.
- B. To endorse Page 4 of this form for any alien you have accepted for a full course of study in your school if that person:
  - (1) Is in the United States in M-1 classification and is departing temporarily from the United States, and there has been no change in the information in items 3, 4, 7, and/or 8 on Page 1. If there has been a change in items 3, 4, 7, and/or 8 on Page 1, a new Form I-20M-N/20 ID Copy must be issued for reentry after a temporary absence.
  - (2) Has a spouse or children who wish to join the student in the United States and acquire nonimmigrant (M-2) classification, and there has been no change in the information in items 7 and/or 8 on Page 1. If there has been a change in items 7 and/or 8 on Page 1, a new Form I-20 M-N/20 ID Copy must be issued.
- C. To establish that any student to whom you issue this form:
  - (1) Is able to pay all expenses incurred (and those of any dependents with the student) while in the United States,
  - (2) Meets all requirements for admission to your school. If you want assistance in determining the student's proficiency in English, contact the Cultural Affairs Officer at the Embassy of the student's country.
- D. To be sure each Form I-20M-N/20 ID Copy is signed and issued in the United States by a designated school official of your school as defined in 8CFR 214.3(d)(1). A designated school official who may be authorized by the school to issue this form must be a regularly employed member of the school administration, whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. Individuals whose principal obligation to the school is to recruit foreign students for compensation may not be authorized to issue this form.
- E. To endorse Page 4 of this form at least every six months when the student leaves the United States for a temporary absence, if the student will be enrolled in your school immediately after reentry.
- F. To retain all evidence which shows the scholastic ability and financial status on which admission was based, as long as the student is attending your school.
- G. To comply with request from the Immigration and Naturalization Service for information concerning the student's immigration status.



IF YOU NEED MORE INFORMATION CONCERNING YOUR M-1 NONIMMIGRANT STUDENT STATUS AND THE RELATING IMMIGRATION PROCEDURES, PLEASE CONTACT EITHER YOUR FOREIGN STUDENT ADVISOR ON CAMPUS OR A NEARBY IMMIGRATION AND NATURALIZATION SERVICE OFFICE.

This page, when properly endorsed, may be used for entry of the spouse and children of an M-1 Student following to join the student in the United States, or reentry of the student to attend the same school after a temporary absence from the United States.

For reentry of the student and/or the M2 dependents (Each Certification Signature is valid for six months.)

Signature of Designated School Official	Name School Official & Title (Print or Type)	Date
Signature of Designated School Official	Name School Official & Title (Print or Type)	Date
Signature of Designated School Official	Name School Official & Title (Print or Type)	Date
Signature of Designated School Official	Name School Official & Title (Print or Type)	Date
Signature of Designated School Official	Name School Official & Title (Print or Type)	Date
Signature of Designated School Official	Name School Official & Title (Print or Type)	Date

Dependent spouse and children of the M-1 student who are seeking entry/reentry to the U.S.

Name Family (Last)	First	Date of Birth	Country of birth	Relationship to the M-1 Student

Other Student Records:


**Authority for collecting:** Authority for collecting the information on this and related student forms is contained in BUS.C. 1101 and 1184. The information solicited will be used by the Department of State and the Immigration and Naturalization Service to determine eligibility for the benefits requested. The law provides severe penalties for knowingly and willfully falsifying or concealing a material fact, or using any false document in the submission of this form.

**Reporting Burden:** Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U. S. Department of Justice, Immigration and Naturalization Service (Room 2011), Washington, D.C. 20536; and to the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0051, Washington, D.C. 20503.

## **LIST OF RECOMMENDATIONS**

1. The INS should consider whether a foreign student program manager should be appointed to coordinate, and be accountable for, immigration issues affecting foreign students.
2. The INS should review and approve all schools currently authorized to issue I-20s before allowing the schools access to SEVIS. Given the improbability that it will be completed by January 2003 (since the required proposed rule change has not yet been published), the INS should decide soon on an alternative plan, including determining how it will proceed in January 2003 if schools are not re-certified, a reasonable time schedule for re-certifying the schools, and an implementation plan for achieving the timetable.
3. The plan to re-certify all schools prior to implementing SEVIS must also resolve who will be responsible for conducting the re-certifications, provide adequate written guidelines on conducting the re-certifications, and provide adequate training to those responsible for performing the re-certifications and making site visits.
4. The INS should establish a unit within each district office responsible for conducting on-site verifications of the INS-approved schools. Full-time schools officers will be needed, instead of personnel who have the responsibility as a collateral duty.
5. The INS must continue to monitor and review the schools, since schools lose accreditation, change their objectives, and sometimes engage in fraud.
6. The INS should ensure that audits are conducted of approved schools to determine whether proper internal controls are in place and that data is being entered into SEVIS completely, accurately, and timely.
7. The INS should decide what office or division will be responsible for analyzing the data that is collected in SEVIS. To fully use SEVIS's capabilities, the INS needs to assign personnel and

establish policies and procedures to take advantage of this analytic function.

8. To ensure that adequate personnel are available to devote to re-certifying and monitoring INS-approved schools and foreign students, the INS should establish fee-based positions funded out of the processing fee that will eventually be charged to foreign students.
9. The INS must also develop a plan for training both INS employees and school employees on how to use SEVIS. The INS should develop a timetable for implementing training and an implementation plan for carrying out the training.
10. SEVIS cannot work unless the necessary offices and personnel are connected to SEVIS, including service centers, POEs, district offices, and consular posts. The INS should devote the resources necessary to ensure that all offices are connected to and are able to use SEVIS as quickly as possible.
11. The INS is proposing regulations that would require visitors to have declared that they are prospective students at the time they entered the country in order to be eligible to change their status at a later date. For this regulation to be meaningful, the INS, working with the State Department, should define “prospective student.”
12. The INS should decide whether aliens will be required to submit documentation in support of their assertion that they are prospective students, such as acceptance letters or offers of scholarships, or whether something less will suffice, such as a statement that they have not yet applied to any schools but plan to after visiting several.
13. The INS should ensure that change of status adjudicators in the service centers are aware of how to access the “prospective student” information recorded in NIIS.
14. To increase the effectiveness of its monitoring of and collecting information about foreign students, the INS should consider whether part-time students should also be monitored. While we recognize that collecting information about every visitor who enrolls in a class or a short course of study would impose a

significant burden on the INS, we believe that the INS should take steps to determine what information about these students and schools should be collected.

15. The INS must ensure that it devotes the resources necessary to maintain a fast processing time for I-539 change of status applications in order to avoid penalizing foreign students who are waiting for their applications to be adjudicated before starting school.
16. The INS must also determine how it will handle nonimmigrants who have applied to become students but whose applications have not been adjudicated prior to the start of their classes.
17. The INS should advise I-539 applicants for student status of the requirement that their applications must be completed prior to beginning school and also advise them of the procedure to be followed if the INS has not completed their application prior to the start of school. This procedure should also be communicated to the schools.
18. The INS should, as part of its overall management of foreign students, designate a person or an office within the service centers with the responsibility of communicating with schools and establish a procedure for accomplishing this objective.
19. The INS should develop clear and specific guidance for service center adjudicators on how information from IBIS checks will affect the adjudication decision, including information about previous overstays, immigration violations and criminal histories. Adjudicators should be informed about what steps to take if it is not clear that the applicant is the subject of the “hit” or “lookout” in IBIS.
20. SEVIS should be designed so that the primary inspector will be notified as part of the routine check performed at the POEs that an alien has filed an I-539 to become a student or has already been conferred student status through the I-539 process so that primary inspectors can verify the alien’s statement of intent to the inspector.

21. Instructions to the I-539 application should inform applicants that if they leave the country while their application is pending, they will be considered to have abandoned the application. Likewise, the instructions should inform the applicants that once the new status is conferred, they lose that status if they leave the country and will be required to obtain student visas to re-enter.
22. The INS should restate its policy with respect to I-193 waivers and ensure that primary inspectors understand and consistently enforce the waiver policy and its limitations. Clear guidance should be re-issued to inspectors about what is considered an emergency that can result in the issuance of a waiver.
23. The INS should change service center adjudicators' performance standards to allow more time to review files and seek additional information. At a minimum, in light of the new processing requirements described in this report, the INS should reconsider the performance standards for service center adjudicators and adjust the standards to accommodate the additional time that will be spent by these adjudicators implementing the new processing requirements.
24. The INS should expeditiously complete and update its field manuals. In addition, it should implement a more effective system for disseminating policies and procedures other than sending the documents to the head of a field office.